



POLICE DEPARTMENT

April 10, 2008

MEMORANDUM FOR: POLICE COMMISSIONER

Re: Lieutenant Kieran Crowe
Tax Registry No. 913051
Criminal Records Section/Aided Unit
Disciplinary Case No. 80147/04

The above-named member of the Department appeared before me on September 20, September 21, September 24, October 2, October 3, October 4 and October 11, 2007,¹ charged with the following:

1. Said Lt. Kieran Crowe, assigned to the Office of Equal Employment Opportunity, while on duty, on or about and between May 1, 2003 and May 11, 2004, engaged in a continuing course of conduct prejudicial to the good order, efficiency, and discipline of the Department in that on numerous occasions, in the presence of a member of the service, identity known to the Department, he improperly used his hand to stroke his genital area; improperly made sexual gestures with his hand by moving his hand up and down in front of his crotch as if he was masturbating; and improperly made sexual gestures with his tongue by sticking out his tongue and wiggling it around in a sexually suggestive manner. (As Amended)

P.G. 203-10, Page 1, Paragraph 5 – PROHIBITED CONDUCT

2. Said Lt. Kieran Crowe, assigned to the Office of Equal Employment Opportunity, while on duty, on or about and between December 1, 2001 and June 4, 2004, engaged in a continuing course of conduct prejudicial to the good order, efficiency, and discipline of the Department in that on numerous occasions, in the presence of a member of the service, identity known to the Department, he improperly used his hand to touch his genitals and to rub his thigh; improperly made sexual gestures with his hand by moving his hand up and down in front of his crotch while at the same time making sighing sounds as if he was masturbating; improperly made sexual gestures with his tongue by sticking out his tongue and wiggling it around in a sexually suggestive manner;

¹ Closing arguments were submitted, in writing, by the Respondent on October 23, 2007 and by the Department on October 25, 2007. The decision reserve date was October 25, 2007.

and improperly touched various parts of said member's person without permission or authority. (As Amended)

P.G. 203-10, Page 1, Paragraph 5 – PROHIBITED CONDUCT

3. Said Lt. Kieran Crowe, assigned to the Office of Equal Employment Opportunity, while on duty, on or about and between April 1, 2002 and June 4, 2004, engaged in a continuing course of conduct prejudicial to the good order, efficiency, and discipline of the Department in that on numerous occasions, in the presence of a member of the service, identity known to the Department, he improperly placed his hand in his pocket and touched his own genital area; and improperly stared at the crotch of the abovementioned member of the service. (As Amended)

P.G. 203-10, Page 1, Paragraph 5 – PROHIBITED CONDUCT

4. Said Lt. Kieran Crowe, assigned to the Office of Equal Employment Opportunity, while on duty, on or about and between December 1, 2001 and June 4, 2004, engaged in a continuing course of sexual harassment by creating an intimidating, hostile, or offensive work environment and by unreasonably interfering with the work performance of his subordinates, identities known to the Department. (As Amended)

P.G. 206-36, Page 2, Sexual Harassment – EMPLOYMENT DISCRIMINATION

The Department was represented by Paul McCullagh, Esq. and Lauren Fox, Esq., Department Advocate's Office. The Respondent was represented by Rae Koshetz, Esq.

The Respondent, through his counsel, entered a plea of Not Guilty to the subject charges. A stenographic transcript of the trial record has been prepared and is available for the Police Commissioner's review.

DECISION

The Respondent is found Guilty as charged.

SUMMARY OF EVIDENCE PRESENTEDThe Department's Case

The Department called Sergeant Dominic Coppola, Sergeant Sean Gallagher, and Sergeant Lawrence Hoffer as witnesses.

Sergeant Dominic Joseph Coppola

Coppola is a 17-year member of the Department currently assigned to the Police Academy's Recruit Integrity Discipline Unit. He testified that in February or March of 2001 he was assigned to the Department's Office of Equal Employment Opportunity (OEEO), as an investigator to investigate employment discrimination cases. His responsibilities included conducting interviews and conferring with his team leader and the executive committee, headed by the deputy commissioner, for guidance with his investigation. He added that the handling of cases required a great deal of writing which included daily worksheets to document his investigative steps and transcribing interview minutes. Coppola stated that the lieutenant or team leader² was also responsible for reviewing the team's case folders.

Coppola described the OEEO office as having cubicles for the investigators, while the two lieutenants, the commanding and executive officers and the deputy commissioner all had enclosed offices. There was also an open area where a fax machine, a FINEST terminal, a copy machine and a refrigerator were located. The lieutenants also had their offices in that area.

² Coppola stated that the OEEO office was divided into two teams and each had a lieutenant as its team leader.

When Coppola was first assigned to OEE0 Lieutenant Lupiella was his team leader. After six months Lupiella left the office and Lieutenant Mark Henig (who was subsequently promoted to Captain) was the team leader of both teams for a period of time. At one point the Respondent, who Coppola said arrived sometime after September 11, 2001,³ became Coppola's supervisor. When the Respondent first arrived at the office Coppola had "minimal interaction" with him, because it was the post "9/11" period and the officers in OEE0 were assigned security details and there was no OEE0 investigations taking place. When OEE0 investigations resumed in December 2001 Coppola began to interact with the Respondent.

Coppola described his initial interaction with the Respondent as "okay" with an exchange of "pleasantries." He then stated that "one of the first real experiences" he had with the Respondent took place during their first case review meeting together.⁴ Coppola explained that "usually on a monthly basis...the investigator and team leader, the executive officer,...the CO [Commanding Officer]...and you went into Commissioner Ziegler's office and they would review your case work...."(T.30) During the meeting Inspector Kennedy, the Commanding Officer, asked Coppola questions concerning the direction of his case. Coppola answered his questions as they "have done it in the past, ...[and] Everything seemed all right." (T.31)

After the meeting, was over, Coppola stated that the Respondent told him "in a sharp tone" to "get into my office right now." (T.32) They went into the Respondent's office and he told Coppola to "close the door." When Coppola asked what was wrong

³ The Respondent subsequently testified that he began working at OEE0 on October 11, 2001.

⁴ The meeting took place in approximately December 2001, in the Respondent's office with the door closed. Coppola subsequently stated that with the door closed there was no other way for someone to see into the office.

the Respondent told him that "When an inspector asks you a question, he doesn't want your opinion...he is not asking you what you want." Coppola argued that the Inspector did want him to answer his questions and the Respondent, according to Coppola, said "No, you will learn -- you are not there to tell the Inspector what you are doing. You are there to listen to the Inspector." (T.32) Coppola further argued with the Respondent that he was wrong and that the Inspector did want his opinion concerning his case. In turn the Respondent reminded Coppola that he was a higher ranking officer and that Coppola will listen to him. When Coppola protested further the Respondent told him that "I'm the number one kiss ass in this Department and you will learn to kiss ass just like me." (T.34) Coppola stated that as the Respondent was making this statement "He stood up with his palms facing away from him, and he pursed his lips as if he was kissing between his palms." (T.34)⁵ Coppola stated that he continued to argue his position with the Respondent and while he did the Respondent "pursed his lips... and then he twirled -- stuck out his tongue and made like a circular motion with his tongue." (T.35) The Respondent then stopped making his gestures and told Coppola to "Get out of here, get out of my office." (T.35) Coppola stated that he viewed the Respondent's gestures as "like a graphic display of what he told me. That he is a kiss ass and he is going to teach me how to kiss ass." (T.35 - 36)

Coppola testified that there were other incidents that he had with the Respondent inside the Respondent's office. In December 2001, Coppola needed worksheets signed by the Respondent. His prior experience with supervisors was to leave the worksheets on their desks for them to sign. In turn they would sign the worksheets and return them to

⁵ Coppola demonstrated for the Court the gestures of the Respondent by standing up with both of his hands in front of his body, shoulder high, with his palms facing away from his body. (T.34)

Coppola. The first time Coppola needed worksheets signed by the Respondent, he went into his office expecting to leave the worksheets for his signature, but the Respondent told him to "Sit down." When Coppola told him "No I got other work to do," the Respondent told him to "Close the door and sit down" and at the same time motioned for him to sit in a chair. The Respondent told him "I'm going to go through your case work." (T.37) Coppola stated that they were the only ones in the office.

Coppola described the Respondent's office as "when you walk in the door there is a wall to your right. In front of you was a locker and a wall and his desk went against that far wall that the locker was against. Then there was a wall behind his desk, then a wall to your left that was part of the doorway, going into the doorway...he sat between the desk and [the] wall behind him" facing Coppola. (T. 38)

Coppola stated that after the Respondent told him to close the door and sit down, he reminded the Respondent that he wrote the work that he wants the Respondent to review and told him "What am I going to do; watch you read what I wrote?" The Respondent told him "I said sit down." Coppola stated that he sat down in a chair that was less than 3 feet from where the Respondent was sitting.

Coppola testified that the Respondent did not sit with his legs under his desk. Instead he pushed himself back towards the wall behind him with his chair turned to the right facing in the direction of Coppola, with nothing between them. The Respondent then opens a "big" manila envelope, "and with his left hand he holds it, it is up against his chest tight leaning on the desk, leaning against the desk and his chest, and he starts reading. And I am just staring in front of me looking around his office." (T.42) The Respondent, according to Coppola, then took his "pointing finger and his index finger, he

put it into his lap, his crotch...outside his pants;...His knees were wide open faced in my direction. With the two fingers, he is kind of moving them back and forth in a very middle of his crotch, and I believe that he was playing with his – touching his testicles.” (T.43 - 44) He further described the Respondent’s movements as “His hand was in his crotch in the middle of his pants, outside his pants, and the two fingers were moving back and forth in his crotch....I believe it was his testicles” that he was touching. (T.44) He stated that the Respondent’s hand remained in his crotch area for “[l]ess than two minutes.”(T.45) When Coppola was asked what was the Respondent doing with his fingers he replied “Just running it back and forth, fingers were moving up and down....His hand was in his lap, and those two fingers were in the middle of his crotch....On his pants but where his genitals should be....It looks like he was squeezing his – touching his testicles.” (T.45)

Coppola stated that he looked away from the Respondent and when he looked back “his hand is cupped and his hand is sliding up and down from his crotch on his right thigh toward his knee on his right knee, on the outside of his pants.” (T.46) He stated that the Respondent moved his hand up and down from his crotch to his knee a “couple of times.” When Coppola looked away again the Respondent asked him “Are you paying attention?” And when Coppola asked “Pay attention to what? You are reading,” the Respondent said “you have to pay attention to me when you are here.” (T.46) The Respondent then signed Coppola’s worksheets and told him to leave his office.

When Coppola left the office he thought what occurred in the Respondent’s office was “bizarre” and “weird” and “upsetting” because he’s “never seen somebody, a man put their hand in their crotch in front of another man.” (T.48) When Coppola was asked

if what the Respondent did could be described “as adjusting himself” Coppola stated that he did not think it was “[b]ecause the two fingers moving up and down, it wasn’t like he was physically trying to make himself comfortable. You know, adjusting yourself no. His fingers were going up and down.” (T.48) He also did not believe that the Respondent was scratching himself “[b]ecause an itch you would have moved your fingers if you had an itch. It was up and down.” (T.49)⁶

By January 2002, it “became normal” for the Respondent to tell Coppola, when he entered his office to “close the door. Sit down.” (T.49) According to Coppola, the Respondent “would read – I would sit to the right of his desk. He would turn his chair and face me. He was not under his desk. His legs were wide open. He always supported – often supported the case folder with his left hand against his chest leaned it on the desk. There are times he will ask you questions about the work, say ‘No, I don’t want you to use this word.’ But it became often where his right hand would go into his lap, into his groin. For a long period of time it was the two fingers in his lap, in the center of his crotch.” (T.50)

Coppola further testified that, in January or February 2002, another incident occurred in the Respondent’s office while the Respondent was reading one of his case folders. He stated that the Respondent made a “fist with his right hand, and his right hand is in the middle of his right thigh. He raised his hand about 12 inches and strokes his hand up and down.” (T.50-51) Coppola stated that the Respondent repeated this gesture approximately six times.

⁶ Coppola described the Respondent’s finger motion in court as moving his middle and index finger of his right hand, back and forth in a scissor-type motion. (T.45-46)

Upon observing the Respondent's gesture, Coppola looked away to avoid seeing what he was doing. When he looked away, he stated that the Respondent look over his reading glasses and said "Are you paying attention? You are not paying attention. Pay attention to me." (T.52) He further explained that he viewed the Respondent's hand gesture as a masturbation gesture "because that is what it mimicked" (T.53) Coppola also recalled that while making the gesture the Respondent also made a "sigh sound." (T.52) He added that the work the Respondent was reviewing "was like a request for rosters and – I don't remember specifically, but it wasn't something that would warrant what I interpret to be a masturbation gesture." (T.52) He also described the Respondent's sighing as a "low sighing type sound [lasting for a] very short period of time while these strokes of his hand up and down occurred." (T.53)

The Respondent would then sign Coppola's work sheets and tell him to "get out of my office." (T.53) Coppola noted that the aforementioned gestures that he described did not occur on the same day, but once a week and none of the incidents occurred with the door opened. "Any time I went in with my case load, he would say 'close the door, sit down.' He would point to the seat right along side his chair and say 'sit down.'" (T.55)

On another occasion, in January or February 2002, when Coppola was in the Respondent's office, the Respondent called a Commanding Officer regarding Coppola's cases. Coppola stated that as the Respondent was dialing the number he "cradles the phone between his left ear and his left shoulder...and he holds both hands out in front of him."⁷ (T.61) While his hands are like that, Lieutenant Crowe purses his lips, makes a kissing gesture. While his hands are like that, there comes a point he sticks his tongue

⁷ Coppola demonstrated the hand movement by holding both hands in front of him, mid – body with his palms facing towards his face.

out....Makes a twirling, a circular motion with his tongue.” (T.62) Coppola stated that as he stared at the Respondent the Respondent asked him “What’s wrong?” Then he signs Coppola’s worksheets and told him to get out of his office. (T.62) Coppola stated that the Respondent’s gesture looked “like someone embracing another person’s head and kissing a person.”(T.62) Coppola stated that the Respondent was making the gestures while he was speaking to the person on the phone. Coppola also characterized the gesture as a “French kiss...like a kissing type gesture.” (T.64)

Coppola stated that he did not document any of the Respondent’s gestures because he was “embarrassed by it [and he] thought it was incredible.” He added that he “just never thought to document....I had no intention of thinking about it or talking about it. I didn’t want to observe it. I never wanted to discuss it.”(T.65)

Coppola stated that the only other gesture by the Respondent that occurred when he was in his office with the door closed was when the Respondent “would be reading the case folder, turn towards me, supporting a case folder with his left hand and he would kiss or lick the back of his right hand.” (T.66)

Coppola stated that his work area consisted of a cubicle located “in an open area where all the cubicles are.” (T.67) He testified that in December 2001, the Respondent entered his cubicle while he was looking at his computer. Coppola stated that when he is facing his computer his back is towards the entrance of the cubicle. According to Coppola, when the Respondent entered “he grabs my arm! I jumped, and I turned and looked at him and he discusses something about work.” He added that from December 2001 until he stopped working for the Respondent in the fall of 2003, the Respondent would enter his cubicle and he would touch “My tricep, my shoulder and my biceps,

those were the three predominant ones and get my attention.” (T.69) After the third time he was touched, Coppola told the Respondent “...you don’t have to touch me. It is all right. What do you need?” Coppola stated that it did not matter that he told him not to touch him, “He always had to get my attention, the biceps, the triceps and the shoulder were the predominant, I remember because I got real upset.” (T.69-70) He further stated that on two or three occasions the Respondent entered his cubicle and to get his attention “with his right hand, he puts it on my left thigh and shakes my thigh to get my attention.” (T.70) He explained that it was the middle of the outside of the left thigh, not the inner thigh. He stated that the touching in the cubicle occurred approximately once a month over a two-year period. He told the Respondent a “number of times” over that period not to touch him and to “knock on the desk” to get his attention. “That is what people did, or you tapped the chair, and he would just cup his hands and laugh and go into why he wanted to get my attention.” (T.72) Coppola stated that he was not aware of anyone that may have witnessed the Respondent during the incidents in his cubicle because he was focused on his computer or audio tapes during those incidents.

Coppola was then asked to “approximate the times, frequency and duration of the types of incidents” that took place in the Respondent’s office. He stated the incidents began in November or December 2001 and ended in either October or November 2003 when he stopped working for the Respondent.⁸ With regard to the incidents of the Respondent specifically touching his own testicles and genital area, he testified that it “happened often...when Lieutenant Crowe told me to come in and sit down and close the

⁸ The Court noted on the record that the period of time that Coppola was referring to was a period of approximately 2 years. The charges and specifications, however, refer to that period as ending in June 2004, not the fall of 2003. While the specification was not amended the Court made it clear that the time in question did not extend to June 2004.

door and would ask if I was paying attention, most of the time his hand went into his crotch.” (T.73) He stated that these specific gestures included “touching the genitals, rubbing his hands up and down his thigh or this masturbation [gesture]” occurred approximately once a week when he was in his office, excluding the periods when he did not have any interaction with him for a week. (T.73) He added that on rare occasions “where twice a week he would call me into his office, and there was some kind of gesture involved with his hand in his lap.” (T.74)

Coppola testified that the Respondent touching his genitals with his two fingers and moving his hand in a “masturbating fashion” took place for “approximately 23 to 24 months” on a “once a month” basis, from December 2001 until November 2003. Coppola stated that the Respondent sticking his tongue out and moving it around in a circular motion started in February 2002 and “only happened two times, four times” during the time he worked for him. (T.79-80)

Coppola, referring to the gesture the Respondent made where he put his hand up to his mouth and licking the back of his right hand, stated that the gesture occurred approximately 6 times, from February 2002 to October or November 2003. He added that the Respondent rubbing the inside of his thigh was independent of the other gestures, and it began in November or December 2001, for once a month until October or November 2003.

Coppola further testified that in December 2001, the Respondent asked him “to go out socially [when he stated]...Hey, we should go out sometime. We should go out for drinks sometime.” (T.82) Coppola told him that because of “baby sitting issues” he did not have a lot of time to go out.

Coppola stated that in January 2002, when the Respondent learned they both belonged to the same fraternal organization, he told Coppola "we should go to a meeting and go out for drinks afterwards..." (T.83) Coppola told him that he did not have time to attend the meetings. Coppola, after thinking about the Respondent's invitation, thought that in his experience when he did go to meetings with the people in the organization, no one ever said to him "lets go for drinks afterwards" because "[t]hey would have coffee and pastry and they would do it right there at the lodge." (T.83)

Coppola further stated that in February or March 2002 he and Captain Henig, (then a Lieutenant) who was also a team leader at the time, learned that they both had an interest in magic and both knew magicians that performed magic acts. Henig invited Coppola to go with him to a magic show and they both went on a Monday night. Two or three days later, according to Coppola, during a case review the Respondent told him "I understand you went out to a magic show" with Henig. (T.86) He further told Coppola that "I thought you had baby-sitting issues. You don't go out. You don't have time....Well, if you had baby-sitting issues, I thought that would cover every thing." (T.86) Coppola told him that it was none of his business and the Respondent told him to get out of his office. Coppola believed that the Respondent was jealous of him going to the magic show with Henig. (T.87)

In November or December 2002, Coppola and his wife went to their office holiday party at the Police Museum. At one point, the Respondent introduced him to a man at the party and after some conversation the man told him, "You have beautiful blue eyes." (T.89) Coppola told him "Okay, take care" and moved away from him. Later at the party Coppola while in the company of other people stated as a joke, "Hey, I have

beautiful blue eyes” and everyone laughed. (T.89) Coppola thought it was funny because he never had a man “tell me that in a social context” and pointed to the man who told him that. One of the women he told this to told him that the man was “Lieutenant Crowe’s partner.” (T.90)

In February 2003, Coppola was reviewing a case with the Respondent and after asking Coppola “Are you paying attention to me?” he told him “You really think you are something, you and those blue eyes.” (T.90) Coppola asked him what he was talking about and the Respondent closed the folder and told him to get out of his office. Coppola concluded that the Respondent “seemed to be like he wanted to endear friendship on some level, and then talking to me like jealousy on another level.” (T.91) Coppola added that when the Respondent was first assigned to OEE0 he told everyone that “he was gay” but Coppola “didn’t care” and “had no reaction.” (T.92)

Coppola stated that the incidents involving the Respondent in his office and in Coppola’s cubicle “was demeaning” and upsetting to him. (T.93) “A number of times after Lieutenant Crowe told me to leave his office...I would leave the whole office and go to the bathroom and throw up.” (T.93) He remembered that “it [threw up] happened twice on the 12th floor and I think a total of ten times, because the other times I would go downstairs to the 11th floor if I felt I was going to throw up, and it happened [at] different intervals – like it didn’t happen the first time with the Lieutenant. Probably second or third time, and at different intervals after my interaction with Lieutenant Crowe.” (T.93)

He stated that he became physically ill starting in the winter of 2002 and the last time he threw up was in the summer of 2003. He further described his reaction to the Respondent as, “There were times, being thrown out of his office after some kind of

gesture going on, I was just upset, I was humiliated. I just had this real down feeling, and I would put my work down and leave, and I threw up.” (T.94) Other times after the Respondent threw him out of his office “after some kind of gesture that he made...I would run to the bathroom and have diarrhea. That bathroom was just the 12th floor. It occurred after I was told to leave Lieutenant Crowe’s office, and some kind of gesture that I found demeaning, upsetting; probably 20 separate incidents I had diarrhea.” (T.95)

Coppola testified that the Respondent also had an impact on his work. He explained that there were times when he would bring his cases to the Respondent and when he “wouldn’t pay attention to Lieutenant Crowe, after one of these gestures, he would say ‘Pay attention.’ When I would have to come maybe a day, two days later to have cases signed or letters looked at, Lieutenant Crowe would tell me ‘I don’t have time for that. I am not looking at any of your case folders.”(T.96) Coppola believed that the Respondent’s refusal to look at his cases was because he would not pay attention to the Respondent when told to do so. He added that the Respondent’s refusal to look at his cases impacted his work because his cases were time sensitive. His material was dated and letters had to be signed by either the Commanding Officer or the Deputy Commissioner. As a result when the Respondent chose to sign off on his work he would circle the dates on the documents and tell Coppola “you have to fix it,” that is to put the current date on the document. (T.97) “More than just having to change a date on a letter or something, I have case folders with final reports that are done, and he wouldn’t take them from me.” (T.97)

When Coppola went to a case status meeting he would be asked “all right, so if you did all the interviews and you started the final [reports] two months ago, you are not

done with the final?" (T.97) According to Coppola, when he started to explain about why the case was late the Respondent would interrupt him and say "It is on my desk." Coppola "never said anything, because if he took it off my desk and put it on his desk, then he did, he is my Lieutenant, he is my boss." (T. 97-98)

At a case status meeting with Deputy Commissioner Zeigler, Inspector Wheeler and Henig in the Summer of 2003, he was asked if he gave his case to the Respondent and when Coppola was about to tell them that he would not take it, the Respondent "gives me this look and he says 'Yeah, I have it' so I say okay."

In September 2003, Henig told Coppola that he (Coppola) and the Respondent "don't seem to be getting along." Henig asked if everything was all right and Coppola told him that "Everything is fine." (T.104) Coppola stated that a week later he went to Henig to tell him, "I think I would like to not have to work for Lieutenant Crowe anymore. Could you switch my team to Lieutenant Screen?" (T.104-105) Henig, "a couple of days," later told Coppola that Deputy Commissioner Ziegler said that he could not change teams.

Coppola decided to "file a change of command" to change teams and approached the Commanding Officer, Wheeler, and told him that he wanted to change teams. He further told Wheeler that he wanted "to work for a different Lieutenant as opposed to just leaving." (T.106) Wheeler informed Coppola two days later that he would be permitted to change teams.

Coppola stated that in the fall of 2003 shortly after getting the approval to change teams, Wheeler called Coppola at home when he was out sick and told him there was a problem with him changing teams. According to Coppola, Wheeler told him that

“Lieutenant Crowe went to the Commissioner and doesn’t want you to change teams...”

(T.107) Wheeler further told him that he was “going to work” at getting him the transfer.

Coppola acknowledged that he did not know what actually happened, “behind the scenes” to block his transfer. Coppola then called his union representative who contacted Wheeler and Coppola was ultimately transferred to another team.

Coppola testified that prior to contacting his union representative about his transfer and prior to giving his statement to Internal Affairs Bureau (IAB) he did not report to anybody in the Department about the incidents that occurred with the Respondent. He stated that he was afraid to report him because the Respondent made it clear to him that he was very good friends with Deputy Commissioner Ziegler’s husband, Chief Douglas Ziegler, and Coppola was afraid of retaliation. Coppola admitted, however, that he was relying on what the Respondent had told him and had no independent knowledge that the Respondent had a special relationship with Chief Ziegler. Coppola added that “Lieutenant Crowe would tell you how he knew those different bosses [who would come in and out of OEEEO] and you would be having a conversation and he would stop the conversation and run over and shake hands with these supervisors, stop and say hello to them. To me...I didn’t think I had recourse. I had nowhere in this Department – I didn’t believe there was any place for me to complain.” (T.109)

Coppola acknowledged, however, that no one in OEEEO prevented him from reporting or making a complaint against the Respondent. He also stated that he was not the person who initially generated the complaint against the Respondent.

Coppola further testified that the Respondent, as his supervisor, filled out his annual performance evaluations. For his annual evaluations signed by the Respondent on

January 17, 2002, the Respondent gave Coppola an overall rating of 4.0 out of a 5.0 or highly competent. (DX 1) The Respondent also gave Coppola a 5.0 or “extremely competent” for his ethics and integrity. For his annual evaluations signed by the Respondent on February 3, 2003, he gave Coppola an overall rating of 4.0 and a 5.0 for his ethics and integrity. (DX 2)⁹

Coppola testified that Sergeant Sean Gallagher worked as a “Supervisor Investigator” on the Respondent’s team with Coppola. He stated that Gallagher was a “peer, a work-type friend...” (T.118) While Gallagher was not a friend of his outside of work, he did socialize with him on approximately two occasions during the time they worked together. Coppola also testified that Sergeant Hoffer worked at OEE0, but not on the Respondent’s team. Coppola was friends with him at work and “socialized” with him “once or twice outside of work.”(T.119) Coppola stated that he went to lunch with both Gallagher and Hoffer. He also went to lunch with other people from his office.

Coppola testified that he was “not really certain” (T.120) of how the Department’s investigation began against the Respondent. He stated that he never discussed the nature of the allegation against the Respondent with Gallagher or Hoffer or anyone else other than his attorney.

Coppola stated that in May or June 2004 he was ordered by the Internal Affairs Bureau (IAB) to report to Hudson Street.¹⁰ It was at this point that he was interviewed by IAB and made allegations against the Respondent. Prior to being called for the interview, Coppola stated that he had no intentions of going to IAB or anybody else in the

⁹ These evaluations have a duplicate copy of the same evaluations attached to them because they are more readable versions than the original photocopies admitted into evidence.

¹⁰ Hudson Street is where IAB Group One’s office is located.

Department regarding the Respondent. He explained that "I thought I dealt with it myself. I didn't work for him anymore. I was fine. I thought I could outlast him. I looked into leaving. No, I didn't want to complain." (T.124)

Coppola further stated that on the day he was interviewed by IAB he learned for the first time from a representative of the Sergeant's Benevolent Association (SBA) that another male sergeant, Gallagher, also made allegations against the Respondent. He also learned that Hoffer was a third complainant against the Respondent in the "summer of '07" from documents sent to him from the "assigned counsel to me to defend me outside of the Department." (T.126)

Coppola further testified that after he was interviewed by IAB he "personally got a lawyer and...filed a complaint...[in] August or September '04." The complaint was for "sexual harassment, employee discrimination, [and] retaliation." (T.122) He stated that he commenced the complaint against the Respondent "to protect myself against retaliation." (T.123) The complaint was filed in the Federal Equal Employment Opportunity Commission (EEOC) and he also sought "monetary interest." (T.123) He stated that when he filed the federal complaint he spoke with Gallagher and told him that he was going to get a lawyer. Gallagher responded by telling him "I don't want to know about it." (T.127-128) Coppola told him the name of the lawyer he was getting and Gallagher told him the name of his lawyer "and we didn't discuss it beyond that." (T.128) Coppola did not think the Federal EEOC complaint was a joint complaint with Gallagher and acknowledged that he never got together with Gallagher and said "Let's go file a complaint." (T.128)

Coppola stated that he made the allegations against the Respondent to IAB “Because it happened. They asked me. They asked me what happened and I went in there and told them.” (T.123) He filed the federal complaint because he “believed it would insulate me or protect me from retaliation from the Department.” (T.129)

On cross-examination, Coppola acknowledged that a federal lawsuit has been filed on his behalf by his attorney, but he never discussed “money” and “never discussed in detail” with his attorney what the complaint was seeking. (T.138) He stated that he has read the federal complaint and is aware that the complaint contained detailed factual allegations and when he was shown the federal complaint in court, he stated that he did not recall previously seeing it before being shown it in court. He explained that he remembered seeing the EEOC document, but did not recall actually seeing the complaint; but added that he may have.

Coppola stated that he never talked to Gallagher about being co-plaintiffs in the federal lawsuit against “the City of New York, Lieutenant Crowe, Deputy Commissioner Zeigler.” (T.140) Coppola explained to the Court that “[s]itting before you today, I thought I was independent of him [with Gallagher in the federal lawsuit]. I don’t remember. It could have happened if it was explained to me, but I just don’t remember it sitting here today.” (T.141)

Coppola, in responding to questions regarding how he conducts his investigations of OEEO complaints, acknowledged that he would want to know when the incident happened, how it happened, and the circumstances and location of the incident.

Coppola acknowledged that he did not complain that he was a victim of sexual harassment because he was afraid of the Respondent. He explained that his “fear was

who was going to investigate it, who would look at it. He [Respondent] knew all these high – ranking people, and I just tried to deal with it.” (T.159) He believed that the Respondent would “ruin my career” through “advancement or assignment.” (T.159)

Coppola further acknowledged that while he feared the Respondent he nevertheless argued with him. He recalled that the first time the Respondent told him to come into his office and sit down he told the Respondent “No. I got other work to do.” (T.161) When the Respondent, his supervisor, told him to “pay attention,” Coppola responded “Pay attention to what?” (T.162) When told by the Respondent, on another occasion to “sit down” Coppola told him, “What do I have to sit down for.” (T.162) On another occasion he also told the Respondent “Pay attention to what? You are reading.” (T.163)

Coppola stated that he did not “think [he] was talking back” (T.163) because “It was normal before Lieutenant Crowe to talk – discuss what would go on.” (T.164) He added that when he didn’t pay attention to the Respondent, he would tell Coppola to get out of his office. Coppola acknowledged that he stated in his official Department interview, regarding the Respondent that “I feel the guy’s in love with me, and now he’s not going to have me under his thumb.” (T.166) Coppola added that he “thought the word was enamored” but agreed that he used the word “love” in that interview. (T.166)

Coppola stated that he had lunch with Gallagher two to three times a week and never asked him if he thought “anything funny” occurred when he went into the Respondent’s office. He further stated that he traveled [REDACTED] [REDACTED]. While he also had lunch with Hoffer and had an interest in

magic with Captain Henig, he did not recall complaining about the Respondent to them or anyone else in the office.

Coppola stated that he heard Inspector Kennedy call the Respondent "Jimmy Neutron"¹¹ by way of kidding with him.

In August or September 2003, Coppola had a conversation with Henig and referring to the Respondent, Coppola told him that if he said the "Sky is blue" the Respondent would disagree and say the "Sky is gray." (T.171) When Henig asked Coppola if he would work better without the Respondent, Coppola would tell him that everything was fine. Three weeks later Coppola approached Henig and asked if he could change teams. Coppola then acknowledged that he stated in his prior Department interview, "It gets close to the Fall of 2003. I go to the Captain, and I said 'Look, I can't work, you know. I say the sky is blue, he says the sky is gray. It's not working, you know. I'm exhausted. I physically can't do this anymore.'" (T.173) Coppola explained that the interview statement referred to the two conversations he had with Henig where he initially told Henig that he was alright and two weeks later telling him that he could not continue to work for the Respondent. He added that in his conversation with Henig he did not tell him that he was being sexually harassed by the Respondent.

Coppola acknowledged that he did not like the Respondent's management style and described him to IAB as a "terrible cop." Coppola's complaint with his management style was that he could not "adjust the roll call" or know which investigator was responsible for "incoming complaints." He stated that as a result of the Respondent's poor management style "It just took longer to do things" because "when he wasn't certain

¹¹ It was explained to the court that Jimmy Neutron is a cartoon character with brown hair and a square head.

how to do something, sent you to go ask...Henig...Screen, and I remember Captain Cassidy. He didn't make decisions."(T.178)

Coppola stated he did not complain about the Respondent to his colleagues because it "was like an unwritten rule, I think, that you walked out of that office, you got to the elevator bank and it is like 'we don't want to talk about EEO.' That is my experience." (T.180)

When Coppola was asked if he ever saw a man making a hand motion as though he is jerking somebody off when he is talking about interaction with another person he stated that in his "experience what I have seen on patrol is totally different than Lieutenant Crowe's gesture." (T.183) Coppola, however, did not believe the gesture was a "gay seduction" on the part of the Respondent. Coppola further stated that when the Respondent rubbed his thigh "he rubbed, with his right hand, the palm side of his right hand, he rubbed from his crotch up towards his knee on the inside of his thigh. He is sitting and going from his crotch towards his knee." (T.185)

While the Respondent was doing this gesture Coppola stated that he was approximately 3 feet away. He stated that he looked away from the Respondent and when he looked back at him that gesture is what he would see. Then the Respondent would say pay attention and Coppola would say "pay attention to what?" (T.186) He added that he did not know what he was suppose to pay attention to especially since the Respondent was reading his case. He added "I am staring at the ceiling. I don't want to watch if your hand is in your crotch, that's you business." (T.187)

Coppola stated that in addition to the physical conditions, vomiting, diarrhea and the inability to get his work done he also stated in 2004, during an interview, that the

Respondent came "[REDACTED]." (T.215-216) He also attributed his financial problems to the Respondent's "misconduct" towards him.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

While Coppola never told his wife what was going on with the Respondent, his wife had concluded that he must be cheating on her because Coppola claimed that the Respondent was holding up his overtime slips. He stated that he learned that the Respondent was holding up his overtime slips from timekeeper PAA Boone. Coppola explained that he believed that the reason the Respondent held up his overtime slips was "when I wouldn't pay attention at his gestures in the office, and when I would respond 'pay attention to what' when he wanted me to pay attention to him, yeah, he held up my overtime slips." (T.219-220)

Coppola acknowledged that during his June 4, 2004 official Department interview he stated that Boone confirmed to him that the Respondent was holding up his overtime pay. He further acknowledged that the words he used during that interview were that the Respondent "mess with my overtime and the time records girl knows this." (T.238)

[At this point it is noteworthy for this court to point out the relevant portions of Boone's official Department interview on October 27, 2004, (RX B) where she acknowledges that when she was assigned as the payroll timekeeper in OEE0, in 2003, she was "made

aware that overtime slips were being submitted late or withheld for certain people assigned to that office.” (Interview pg. 4) She stated that it was Coppola and Gallagher who told her that “two lieutenants” were involved in holding up the overtime.

Boone told the IAB investigator that Coppola and Gallagher did not specifically make allegations of their overtime being withheld by the Respondent “but I knew he [the Respondent] was on (sic) [one of] the Lieutenants who would pull the overtime slip. They never came up to me and said Lt. Crowe is holding our overtime slips.” (pg 5)

When Boone was asked if anyone had mentioned to her that they felt that the “lieutenant or lieutenants” were holding their overtime as some type of retaliation action? She stated “Yes...It was a known hostility between Lt. Crowe and Sgt. Coppola. And whenever, if Sgt. Coppola did something, Lt. Crowe was always, it was out in the open. He [the Respondent] made I know (sic) in my presence he had made a known statement of ‘I’ve got to watch him....’ That’s just from being in my office like if he would hand something, if Sgt. Coppola would hand me an overtime slip and after he walked out of the office he [Respondent] would say give me that because I got to watch him. And that’s all I know. He would take it in his office because that was procedures for them to take it in their office.” (pgs 7 & 8) She added that both lieutenants would “sometimes” fail to submit overtime in a timely manner.

While Boone did not know what the hostility was between the Respondent and Coppola she was informed that Coppola was transferred from the Respondent’s team because they were not getting along. Boone acknowledged that neither Coppola nor Gallagher told her that the Respondent held up the overtime on purpose nor did she ever tell them that “you know he always hold you to (sic) guys overtime slips.” (pg 9) (RXB)]

Coppola further testified with regard to the foreclosure action that he stopped the foreclosure before his house was taken from him. He stated that "we were able to make an agreement to pay and become current...we were able to fix it in a timely manner that they weren't going to go forward and we'd lose the house." (T.241) [REDACTED]

[REDACTED]

[REDACTED]

Coppola testified that early in his career he received charges and specifications while he was assigned to the 110 Precinct after graduating from the Police Academy in April 1991. He stated that while on duty answering telephones in the Field Training Unit, a "noise complaint" was made to him and he assigned it to an officer. The officer he assigned the complaint to became irate and told Coppola "You go on a noise complaint rookie. I am not going on a noise complaint." (T.252) The officer berated Coppola on two subsequent occasions cursing him and at one point punched him in the face knocking him to the floor. Coppola required treatment at a hospital and when he returned to work he was given "injury line of duty paperwork" and told by a sergeant "Hey kid fill out the papers. Remember you slipped and fell..." (T.255) Coppola filled out the paperwork indicating that he had slipped and fell.

Coppola stated that he lied on the line of duty report and received charges and specifications and he added that the charges were reduced to a command discipline and as a penalty he received a warning and admonishment. He was not transferred from his command after this incident.

Coppola acknowledged that the dimension of the Respondent's office was approximately eight feet by eight feet. Outside his office is a "snack area" that contains a

refrigerator, coffee machine and a toaster oven. While there was no place to sit and eat, members could retrieve their lunch from the refrigerator, heat up food and pour a cup of coffee. Coppola indicated that while sitting in the Respondent's office he "may have" heard people right outside the office in the snack area.

Coppola reiterated that because of the "unwanted acts" (T.258) of the Respondent he suffered approximately 20 episodes of diarrhea and 10 episodes of vomiting. The first time he vomited was in the "winter of '02," which occurred in the men's bathroom on the 12th floor.¹² He remembered using that bathroom on two occasions. He informed the court that when he left the Respondent's office he "at times [went] straight from his [Respondent's] office, other times [from] his [Coppola's] cubicle." (T.259) He explained that "the first time ever was one of the limited times that the Lieutenant cradled the phone and held his hands and made kissing gestures." (T.259) He further explained "I believe I put my case folder in my cubicle and just didn't feel well, and upset, and went to the bathroom." After throwing up "I washed my face and cleaned up, and I think I bought ginger ale." He then returned to work. (T.260)

According to Coppola, the second time he vomited after meeting with the Respondent, he believed "that was an incident where Lieutenant Crowe kissed or licked the back of his hand while he was on the phone in front of me.

The third time he threw up after meeting with the Respondent "was probably more than a month later, or a month later and it was one of these things where the Lieutenant was telling me to pay attention, and it was a lap gesture where there was masturbation. I didn't want to be there. It was one of these things where I said 'Why do I have to sit here' and I put my stuff down, walked away and felt uncomfortable. I went

¹² The Respondent's office is also located on the 12th floor.

to go to the 12th floor bathroom and I went downstairs to the 11th floor to go to the bathroom." (T.262) He stated that he went to the 11th floor bathroom because "the second time I threw up at work and I used the 12th floor bathroom, when I came out and I was washing up, somebody – I don't know who – you see people in passing on the elevators. I believe they heard me throw up,...and they said 'Gee, are you okay?'" (T.263) He added that he went to the 11th floor bathroom because he did not know anybody there to have to explain his condition to. He went to the 11th floor bathroom by walking down the stairs and the bathroom "was right there." (T.264)

Coppola stated that prior to these incidents of diarrhea and vomiting he had problems with his stomach, [REDACTED]. He also stated after every bout with the vomiting or diarrhea he went back to his office and continued working. He added that he did not have problems with vomiting or diarrhea [REDACTED] during his commute home because he "would either take Imodium or Tums, and if there was a problem on the [REDACTED]." (T.268)

Coppola stated that he formulated the belief that he was a victim of sexual harassment and that he was going to make a complaint about it "probably [at] the end of the summer of '03." (T.262) He did not, however, record any of the dates and times that the incidents took place.

Coppola further stated that the Respondent touched him inappropriately while in his cubicle on approximately 20 occasions from December 2001 through September 2003. When reminded that he told IAB that the Respondent was constantly showing up at his cubicle and touching him inappropriately he stated "If that is what it says, yes." (T.274)

Coppola testified that after he left the Respondent's team he continued to interact professionally with the Respondent. He also interacted with him during his office Christmas Party in 2003. Coppola, after looking at a photograph of him and the Respondent (RXD), noted that "This is the '03 Christmas party. There was a magician there doing a trick. We were watching him, Lieutenant Crowe and I." (T.276)

Coppola further testified that there came a point where he made a complaint to the federal Office of Equal Employment Opportunity, and in that complaint he wrote "I believe that the conduct was not limited to me, and he acted that way toward other subordinates including Sergeant Gallagher." (T.278)

On redirect-examination, Coppola testified that the incident that occurred when he was a rookie happened in November 1991. The police officer who struck him was a senior officer with approximately 16 years with the Department. When the officer struck him, he suffered a broken nose. The officer who struck him also received charges and specifications and Coppola testified against him at a Department disciplinary hearing.

Coppola testified that he did not document the incidents with the Respondent "because it was just very upsetting and humiliating -- demeaning. Humiliating and demeaning. I just never thought it would ever escalate, and I just didn't." (T.287)

Coppola further testified that while he was familiar with a gesture "that people might make jerking somebody off," "[w]hat Lieutenant Crowe did was much more graphic than what somebody had ever seen perform on patrol. On patrol they don't call it jerking someone off, they say stroke, just stroke -- a stroke, and they hold a closed fist and they hold it in the air, out in front. That is a stroke job. That is not what Lieutenant Crowe did. Lieutenant Crowe held his fist between his crotch -- right side of his crotch

and right knee on the inside of his thigh and made a stroking motion up and down close to 12 inches from the thigh up to the air, back and forth and he made a sigh, moaning sound, so it is not the same as anything I had ever seen before.” (T.291-292) He added that the Respondent made those gestures for “a minute, more than a minute.” (T.292) When other people made the gestures “[t]hey just hold the hand and say stroke job, stroke the person. Seconds.” (T.292).

Coppola stated that in his EEOC complaint he stated that he believed that Gallagher may also have been subjected to the gestures of the Respondent because he became aware of this information from the SBA attorney at the time of his IAB interviews. “And the name [Gallagher] was put out there, and they said to avoid him and that’s what I did....When you put the pieces together, what the SBA attorney tells me, and I start to say the guy [Gallagher] looks like agitated, but I was never aware of it or never thought of it before, because I was in my own state of agitation....” (T.302) He added that the information did not directly come from Gallagher.

He stated that what influenced him in making the EEOC complaint was “IAB called me down and they asked me about it, and I felt I could protect myself from retaliation.” (T.303)

On re cross-examination, Coppola was asked if he recalled during his IAB interview on June 4, 2004, being asked the following question and giving the following answer:

Q: So he is sitting behind the desk, and you are sitting to the side of his desk?

A: And I have a clear view of this and – and there’s no folder in his lap. He has the folder up on the table, and he’s got the bifocal lenses reading, and he looks up at you and he smiles at you, and I am looking. I couldn’t breathe. I

started to tremble. Jesus, no, this can't be. Now we progress and any time he would do this thing and stroke and look up at you, I would say, 'I have other things to do.' He said, 'No. You are going to sit right here' so he would – he would do this any time I went in there, close the door and it's there. I didn't know what to do. I would stare at the ceiling. I could tell you guys every crack that is on the ceiling. There is water pipes, how they turn, how they go out through the wall, because I don't want to sit there and watch someone stroke their penis, his playing with your balls, your testicles to get yourself aroused and erection and sit up and look at me and smile." (T. 304)

Coppola admitted that he made that statement.

Coppola reiterated that he never had a conversation with Gallagher that formed the basis for the statement that he made in his EEOC complaint. He also reiterated that when he was told by the attorney "Don't talk to Sean Gallagher" he believed that Gallagher must also be a victim of the same kind of harassment that he was. (T. 305-306)

With regard to his filing a false police report in 1991, he acknowledged that he did not make a connection with the dropping of the charges and specifications and his agreeing to testify against the officer who struck him. He further acknowledged that he deliberately lied in that case and added "I was following – the Sergeant said 'Hey, kid, you slipped and fell.' I went back and I was upset by it and I said 'You know what? I will say I slipped and fell.'" (T.309) He "just got back from the emergency room and...wanted to go home." (T.311)

Coppola stated that he did not believe that he was the one who initiated the complaint to IAB against the Respondent. He further stated he did not know of an anonymous communication to the Police Commissioner or to IAB making similar allegations that he is testifying to. Nor did he know of the detailed letter that Gallagher wrote to the Police Commissioner and IAB.

Coppola testified that when he reported to IAB and before he was interviewed the attorney informed him that the subject “was a male sergeant versus lieutenant from my unit.” (T.316) He explained that before he went into the room to be interviewed the lawyer spoke to the investigator about the subject matter. He further explained that before he went to the interview he thought the subject of the interview was Inspector Wheeler who had recently been transferred from OEE0. But when he arrived at IAB he was told that it had nothing to do with Wheeler; “it is a male on male incident and sexual harassment.” (T.319)

Sergeant Sean Gallagher

Gallagher is an 18-year member of the service currently assigned to the Deputy Commissioner – Training, Investigations Unit. His current command is located at the Police Academy where he does internal investigations involving misconduct cases and he also takes part in the monitoring of integrity programs.

Gallagher stated that he was assigned to OEE0 as an investigator in April 2003. His duties were to investigate sexual harassment and other cases relating to Equal Employment Opportunity Laws. In OEE0 there were two teams of investigators consisting of approximately twelve investigators. They consisted of sergeants and detectives and were headed by two lieutenants, Lieutenant Screen who was in charge of team one and the Respondent who was in charge of team two. According to Gallagher, the purpose of OEE0 is the Department’s mechanism for investigating violations of federal EEO laws prohibiting discrimination and sexual harassment.

Gallagher testified that when he received a complaint that would require investigation he would interview and question the victim, witnesses, the Respondent involved in the case and gather any material evidence that would be relevant to the case. He would also prepare investigative case reports outlining his investigative steps that he had taken and prepare "a final report that we had to do summarizing the case and laying out our findings." (T.329) He stated that the Respondent was responsible for reviewing his written work on a regular basis.

Gallagher stated that his training for OEE0 began with his training at Cornell University. Prior to being assigned to OEE0 he also gained investigative experience from his two and half years as an investigator for the Department's Brooklyn North Investigation Unit. His investigations at Brooklyn North consisted of investigating misconduct cases, internal investigations and investigations of officers involved in shootings.

Gallagher testified that before being assigned to OEE0 he did not know the Respondent. He first met him during his interview for the job in OEE0 where he was assigned to the Respondent's team. His initial interaction with the Respondent was professional and "at the time what I believed to be, a supervisory type relationship where he would help me learn the different aspects of investigating EEO violations since they were different than what I had been investigating, at least the law part of it, and helped me along with organizing cases and making sure I had the right case work done as compared to what I had been doing so it was that type of interaction." (T.331) He added that the Respondent was his Lieutenant and he had "no real difficulty with him." (T.331) Gallagher stated that the issues he did have with the Respondent was "writing style,

amount of time it was taking me to do a case, my decisions or my theories that I would come up with as to what a case would follow given the information I was given by complainants and witnesses; that type of thing.” (T.332)

Gallagher recalled that members of his team included Coppola and Detective Williams and two or three other detectives. He stated that he was not sure if Sergeant St. James was on his team, but she also was a member of OEEO at that time. He did not know Coppola before he was assigned to OEEO. Gallagher further stated that Coppola, who worked in the cubicle next to his, had already been assigned to OEEO when he arrived and would help him with any questions regarding his cases. He and Coppola became friendly and discussed hunting, guns and things of that nature. He and Coppola also went to lunch at times, approximately once or twice a week, and for a period of time they commuted to work [REDACTED].

Gallagher also knew Sergeant Lawrence Hoffer from OEEO but he was not sure if Hoffer was on the same team as him. He stated that when he first arrived at OEEO, Hoffer was doing EEO investigations and was later assigned to the statistical unit on the sixth floor. He stated that he was friendly with Hoffer and that they talked and joked around and went to lunch together on occasions.

Gallagher acknowledged that there came a time when unusual things began to happen between the Respondent and him inside the Respondent's office. Gallagher stated that the Respondent's office was inside the main office of OEEO near the location of the refrigerator and coffee machines. The Respondent's office had one door that lead in and out of his office. Gallagher stated that the incidents with the Respondent began in the beginning of May 2003. He added that “I think it was in May of 2003 where I began

noticing that while I was standing in front of his desk going over a worksheet or asking a question, I would find him first looking at me in the face, and then he would look towards my crotch area, and then back towards my face or back towards the paper work and back again towards my crotch again. I assumed at that point it was my area, my genitals; that area of my crotch.” (T.337) Gallagher further explained that “while talking with me, he would look at me in the face like you would normally have a conversation with someone, and then his eyes would divert towards my crotch area,...and a lot of times it would sit there for fifteen, twenty, thirty seconds, and then drop to the paperwork, or come back to look at me in the face again.” (T.337) During this first incident while Gallagher could not be certain as to the number of times the Respondent looked at his crotch area he stated “it could have been two or three times I am not exactly certain.” (T.338) Gallagher further explained that this first incident occurred in the Respondent’s office when he was standing in front of the Respondent’s desk on the opposite side from the Respondent while the Respondent was sitting at his desk in his chair. Gallagher believed that the Respondent’s office door was open during this first incident.

Gallagher described the location of Respondent’s desk as perpendicular to the door on the other side of the room and the door to the office would be to his right and the Respondent would be facing across to the opposite wall of his desk. Gallagher stated that the reason why he was in the Respondent’s office at this time was because he would have had a question about his case or the Respondent was reviewing his worksheets. After the incident he stated that he just walked out of the Respondent’s office.

Gallagher testified that the next time he went to the Respondent’s office, either the same day or the next day, the same type of staring at his crotch occurred. He stated “I

know it happened the very next time I was in his office. If I was in his office two or three times, then it would have happened two or three times that day. Normally it was only when I was standing. When I was seated it didn't happen as frequently or if at all at this time." (T.340) Gallagher stated that frequency of this kind of conduct by the Respondent happened "two or three times a day depending on -- if there was a day that I didn't go into his office for whatever reason or if he wasn't there then it didn't happen." (T.340) He added that this kind of conduct by the Respondent occurred five to ten times to fifteen times a week "depending on how often I was at work. If I was at work five days that week and I had to be in his office five days and he was there and I was standing that is how often it happened." (T.341) According to Gallagher, this conduct by the Respondent continued "probably until March of 2004, and then I think there was one more incident after that." (T.341)

Gallagher further described the incidents of the Respondent staring at his crotch as "they were different. There were times it was quick, there were times his eyes would linger longer than thirty seconds. It was almost at that point I just stepped to the side or excused myself and would leave. Then there were instances where I believe it happened while I was sitting in a chair if I didn't have anything in my hands. There were only a couple of occasions when that would happen, because at that point I started to carry things into the office to put in my lap...so he couldn't do that anymore. I just didn't want to have him looking at my genitals anymore. That started happening more towards the later months more like December (2003), January (2004) I started doing that. Started carrying things into the office with me, sitting down more often." (T.342) Gallagher also stated that he "would sit down and cross my legs, wear looser fitting pants. Because of

the weight fluctuating, pants would get looser, pants would get tight so I would wear looser fitting pants. So it wouldn't define my genital area as much." (T.343) He stated that he started wearing looser fitting pants in November or December 2003. He further stated that after wearing looser fitting pants he thought "that is when it started getting to the point where he would look longer. Maybe because it was a little more difficult to see." (T.343) He added that on these occasions the Respondent was looking at his crotch for periods of thirty to forty five seconds; "It was a definite pause in the way he was looking at me." (T.344)

Gallagher stated that during these episodes of the Respondent staring at him Gallagher was in the Respondent's office to have him check the paperwork in his case folders. He added that the Respondent "would also have me come into the office and talk to me about cases in general, but oftentimes the conversations would go off onto talking about history or family or my wife, or the goings on in the office; not just focused in on my cases. Those sessions would last twenty to thirty minutes." (T.344) One of the topics that they would discuss was foreign films because the Respondent like to talk about foreign films. He stated that they also discussed history because Gallagher had a Bachelor of Arts Degree in history and they also discussed Gallagher's [REDACTED] [REDACTED]. They also talked about computers and about his relationships. Gallagher stated that he and the Respondent never socialized outside of the office nor did the Respondent ever ask him if he wanted to. He further explained that those twenty to thirty minute meetings were conversations where the Respondent "had me come into the office, sit down in the chair next to the door, the door would get closed and we would have lengthy discussions." (T.345)

When Gallagher was asked how many times a day he would have contact with the Respondent he stated "in the beginning it was frequent, because I had a lot of questions in regards to EEO matters that I just didn't have the knowledge for so I was back and forth to his office quite frequently. As I became more knowledgeable on EEO law or I found other people I could speak to about it in the office, I avoided his office as much as I could. In the beginning, the first couple of months, April, May, June, it might be five, six, seven times a day. As I went on, it became two, three, four times a day or a couple of times a day, or I wouldn't go in there at all on my own accord and he would call me into his office." (T.345-346)

When Gallagher was asked how often would the Respondent stare at his crotch on the days he had to go into the Respondent's office a number of times, he replied "if it was a quick visit where I could just run in, do something, and run out and I was standing, it would happen then so assuming that most of them are quick visits, three or four times in the beginning in the first few months. Again as I spent longer periods of time in his office, I would sit down so it wouldn't happen as frequently." (T.346)

Gallagher stated that there were a number of other things that happened as time went on with him and the Respondent. He stated "there were incidents where he would be on the phone – what would happen in our office is I would go in there with a question, or if I had a problem or I needed to speak to a higher ranking member of service, I would go in and explain what I had to do, and he would call that higher ranking member of service. It wouldn't be tasked to me; he would take it on. He would pick up the phone, dial a number. As the phone is ringing, there were times that he would reach down and cup his hand in a round fashion by his crotch and move his hand in a jerk – a motion up

and down six to twelve inches from his genital area in a slow motion several times. That probably happened more towards the fall, October, November of 2003 that that started.

That happened on and off. It wasn't a frequent thing. It maybe happened ten times."

(T.348) Gallagher then described how the Respondent would cup his hands. He stated "In a round fashion with the thumb closed together and index finger touching, as though you are holding a round object, a pipe or something like that. It would start down here at his genitals and then move up, move down, back and forth a few times."¹³

Gallagher was then asked if the Respondent said anything while he did this gesture with his hand and Gallagher replied "not normally, no. If anything, while he was doing that, the conversation would start on the other end of the phone. The conversation would start with the person he called on the other end of the phone." (T.349-350)

Gallagher explained the Respondent's gesture as "it seemed as though it was a masturbation-type thing. I didn't take it as the understood term is jerking somebody off, to use that terminology, or that sense. I took it more as a masturbation, a self-satisfying type act." (T.350) Gallagher stated that "after the hand motion stopped, he [Respondent] would continue his conversation, maybe write down some notes from the information he was getting from the person he was on the phone with, and I would gather up my material and whatever notes he had written and leave." (T.350) Gallagher stated that the masturbation-type movement was a simulated one and the Respondent had his clothes on at all times. Gallagher also noted that the Respondent never made any comments about the gesture that he was making; what he was doing it or why he was doing it. Gallagher

¹³ Mr. McCullagh described for the record that the witness stood up and placed his "right hand in kind of a circular fashion as if he was holding an object. He placed his hand starting near his genitals, raising it up towards the body a number of inches. Up and down motion several times." (T.349)

added while he was doing the gesture he was looking at Gallagher. Gallagher noted that that particular gesture began in the fall of 2003 and continued through March of 2004.

Gallagher stated that while he found these gestures unusual he did not make an effort to document them in writing because he “was trying to ignore it. It bothered me. I was embarrassed. At a certain point I was in denial that something like this could happen to me. I am an EEO investigator, and I hear about what men do to woman, but I never thought that it could happen to a man although it is – it was known through the law that that did happen, but I never thought that it would happen to me and with another man so I just – I refuse to admit it to myself. It wasn’t until March that I did and finally did something about it. At that point all these things had passed already. I remembered them, but it wasn’t something that I wrote down. I didn’t want to admit it so why would I want to write it down.” (T.352) Gallagher noted that these incidents or gestures occurred on the 12th floor in the Respondent’s office with the door closed. He stated that the door was closed when the Respondent would call him into his office and he would say “come, sit down, and close the door.” (T.353)

Gallagher testified that there were other incidents with the Respondent. In March 2004 an incident “that caused me to finally admit what was happening was that we were talking about a case that I had that involved a captain that I knew, or I knew of that I worked with and it was a closed case, and we had to notify a commanding officer about it. I suggested because I worked for Chief Giamonti at the time in Brooklyn North Investigations, that we let him know about it, make him the person notified and have him handle it, because I knew he would handle it correctly; he would admonish the captain. Lieutenant Crowe looked at me and said in a somewhat seductive tone of voice, ‘Oh, yes

Chief" and he held out his hand as if he were holding on to a man's testicles, stuck out his tongue and started moving it around like he was licking a man's testicles." (T.354)

Gallagher stated that that was the last incident or gesture that the Respondent made before Gallagher made his complaint to the Department.

Gallagher stated that there were other incidents that occurred with the Respondent. He stated that about the same time frame as the simulated masturbation previously described, starting in the fall or October 2003 and lasting through March 2004 "there were times we would be talking about more personal things, again going into history and our personal lives and our personal interest, where I found him rubbing the inside of his inner thigh with his hand....He would rub the area inside the inner thigh up towards his genitals with his hand resting on his thigh, the palm of his hand resting on his thigh, and his fingers extended down towards the inside of his inner thigh." (T.355-356) He described the Respondent's hand as "it was open flat out with the hand, the heel of his hand or the palm resting on the top of his thigh. The heel of his hand resting on top his thigh. His fingers extending down to the inside of his thigh and resting up towards his genitals at that point." (T. 356)

Gallagher stated that he believed that this incident occurred in October 2003 while he was seated inside the Respondent's office with the door closed. Gallagher stated that he believed that they were discussing his wife and then the conversation moved to the relationship the Respondent was having with his partner. Gallagher stated that he was aware at the time that the Respondent's sexual orientation was homosexual. He stated that he became aware of this either through members of the office or from the Respondent. He stated that the Respondent told him about his partner and about

spending time in the clubs and going out. Gallagher further stated that he found nothing wrong with somebody having a homosexual life style if that's what they chose. He further stated that he has a number of gay friends and that he did not have a problem with the Respondent being gay. He stated that he also had a radio car partner who was gay and he never found that to be a problem either. Gallagher stated that all of the incidents that occurred with the Respondent occurred while he was in his office with the door closed. He also stated that he did not know if anyone was outside of the office at the time because in his experience he could not hear anything outside that door. He also stated that at times when he was outside the Respondent's office he could not hear what was going on inside the office.

Gallagher further described how the incident started where the Respondent was rubbing his inner thigh in October 2003. He stated that he was seated in the Respondent's office in "the chair [that] was right next to the door as you walk in the door to the left side, and that puts you almost directly across from the desk, and you are able to see the whole area behind the desk." (T.360) He added that the Respondent "was seated behind his desk in his chair. In the chair just to the left of the door, which was directly opposite the side of his desk." (T.360-361) Gallagher further explained that in reference to where he was seated, the Respondent's chair was "at an angle, angle to the left from me with clear visibility of all the area from behind his desk. I couldn't see the rear of his desk, but I could see the area behind his desk and him." (T.361) He noted that he was not more than four or five feet away from the Respondent and that the only obstruction was "just the small area where the corner of his desk was and the top lip of his desk, but other than that" there was no obstruction. (T.361)

When Gallagher was asked if he could describe how the incident commenced he stated "with the conversation we were having, his hand just dropped down into his lap, and I just saw that – it just caught my attention that his hand was moving with his fingers on his inner thigh. My eyes diverted to the area, and it appeared that he was - not scratching something, which is what I thought it was at first, but it almost looked like he was gently rubbing something. It was as though he was gently rubbing something. It was the tips of his fingers, not the tips of his finger nails that were in that area rubbing back and forth again, like I said, it was three to six inches that that motion was. With his palm sitting still, it moved back and forth from his genitals down towards his knees, again, approximately three to six inches." (T.362) Gallagher further explained that he did not know whether the Respondent was actually touching his genitals because he was wearing his pants and added that "he didn't actually go into his genital area. It was to the right where his genitals began, his testicles if you want to call it that, and down away from that towards his knee." (T. 363) Once he realized what was happening he diverted his eyes elsewhere. He stated that this particular gesture happened three or four more times on three or four separate incidents over the period of time ending in February or March 2004. He added that the incidents always had the same set of circumstances, when they were talking about something personal and when he was in the Respondent's office for approximately twenty to thirty minutes at the time.

Gallagher stated that there were other incidents that occurred when he was in the Respondent office. These incidents again began in October or November 2003 and ended in March 2004. He explained that "there were times, again, with a phone where he would, again an instance of calling a higher ranking MOS in one of my cases, he would

take the phone and hold the ear piece a side away from his head and the receiver close to his mouth and stick out his tongue, wiggling it back and forth as though he was kissing the phone, tongue kissing the phone with that other member on the other end of the phone. I think that happened a number of times, but again it started...October, November of 2003 and went through March of 2004.” (T.367) He further stated that “there was also an incident where he held out his hand in front of his face open, as though he was cradling something like somebody’s head, and I got that impression because he would stick his tongue out and move his head towards his hand and start moving it around like he was kissing it, like he was tongue kissing the object. I think that happened three times. Again, I think that happened more towards the winter more towards December of 2003, January of 2004.” (T.367) Gallagher stated that the incident while the Respondent was using his tongue while on the phone happened approximately ten times from November 2003 to March 2004.

Gallagher stated that he was the person who reported the Respondent’s gestures and conduct to IAB. He stated that he made this complaint in the first week of May 2004 and he did it in writing. He stated that he sent a letter with his signature to the Chief of Internal Affairs at the Command Center on Hudson Street and he also sent a letter to the Police Commissioner. Gallagher reiterated that he did not report the Respondent sooner because it was a matter of denial. He added that “for one, it is embarrassing. Any type of case where there is -- at least that I have come across, where a man is being harassed, he doesn’t want to admit it. For me, I am an investigator. Here I am doing this work, and this is happening to me. I just didn’t want to deal with it. And then where it is, it is same sex, it is more embarrassing. I don’t have anything against gay people, I still don’t, but I

am heterosexual, and I don't particularly agree with that lifestyle for myself. Whatever someone else wants to do, that is fine, but that is not for me. There is a whole other thing, a sexuality issue; why is he attracted to me now if that was the case. It was a toss up between being attracted, or was it a matter of being controlling and predatory. You know, that is the state of that person's mind, I imagine. All I know is that type of stuff was happening to me. I shut it out, I closed it out, I withdrew. I withdrew from my wife, I withdrew from my family. Withdrawing in a sense I wouldn't talk to them about any thing of substance for fear that this would come out; that I would have to deal with it." (T.370- 371)

Gallagher testified that as a result of his experience with the Respondent his "work started to suffer." (T.371) He stated that he did not want to report to work "to discuss cases anymore." (T.371) He explained that his work suffered at first because the amount of time he spent in the Respondent's office prevented him from getting his "case work down." (T.371) He explained that "there was always an interruption. He [the Respondent] was calling me 'come in to my office.' I would have to stop what I was doing, go into his office, talk, go back out. It would last twenty, thirty minutes. Now I was off what I was doing as far as my case work was concerned. Phone calls he was making was interrupting the work I was doing, and then it became I didn't want to go into the office. I didn't want to have anything to do with him. I minimized the amount of contact. Consequently, now I am minimizing the amount of information I can get or get the approval I needed to take the next step in my case so my cases started backing up. It wasn't that I was doing poor investigations; it was that I wasn't doing them fast enough or in a timely fashion." (T.372)

Gallagher testified that the Respondent's conduct or gestures affected his objectivity in his work. His concern was that he was still investigating discriminatory and sexual harassment cases and he "wouldn't bring what I was dealing with into it and look at the facts. As a matter of fact, in one case, I actually had another sergeant work with me on a case to make sure I was maintaining my objectivity."(T.372)

Gallagher further testified that he began taking emergency days off because of what was taking place with the Respondent. He explained that in the past he would take emergency days ("E-days") because his wife would get ill and he would have to take her to the emergency room and he would take E-days because of her. After the incidents with the Respondent he stated "there were days I would just wake up and I didn't want to deal with it, and I would call an E-Day and use that as my excuse because nobody questioned it. I couldn't call and say I'm being bothered by my Lieutenant Crowe and I don't want to come to work today. So that was the excuse. There were a number of days I would call in an E-Day or call in sick so I didn't have to deal with the harassment." (T.373) He further explained that he did not come to work because he did not want to deal with the Respondent, but physically he was fine. He further explained "upset stomach maybe just because having to think about it, about the treatment I was getting, but other than that, I was fine." (T.373-374)

Gallagher further testified that he also felt intimidated by the Respondent. He stated that the Respondent knew people and made it clear to him that he knew people. He explained that "from outward appearances, he was good friends with Deputy Commissioner Zeigler. He was friends with Chief Zeigler. He was always stopping and talking to two and three-star chiefs when they came to the office. Chief Stahl, he would

stop and shake his hand. He was friendly with Chief Kennedy. He was always on the phone with a chief, inspector, some assistant commissioner so in my mind, I had no out. In my mind, if I wanted to complain, who was I going to complain to; one of his friends? I felt if I didn't just sit there and take it that in some way I was going to be damaged in my career or in my position at OEEA. As it was, after this complaint was made, all the classes that I was taking at Cornell, which I was supposedly on the fast track for, were stopped. As a matter of fact, one of the classes I was supposed to go to got canceled by them, the office." (T.374 -375) He noted that it was right after he made the complaint that his classes were canceled and someone else was sent in his place.

Gallagher testified that he had "professional issues" with the Respondent's management style. He explained that he was a different type of supervisor and investigator than the Respondent and "was used to the way my lieutenants and my captains had run my investigations, had approved of my writing style." (T.375) Gallagher had written hundreds of worksheets and reports for district attorneys and officers involved in shootings and there were very little changes that were made to his work. He stated that "everybody was happy with my work." (T.376)

When Gallagher went to the Respondent with his work "...it was nit - picky, red line stuff. I was having to redo the same worksheet over and over again because it was a change here, a change there. When he changed the worksheet again and again and again, it required me to have to go back to his office to have him approve it." (T.376)

Gallagher testified that there came a time when he and St. James realized there was a problem with the way the Respondent was managing the team. He did not necessarily mean his management of the team was wrong "it is just that we thought it

could be done better.” (T.376) Gallagher and St. James decided that they needed to meet with other members of the team to see if they agreed with them. They brought the team “together” and after a discussion of the Respondent they did not “reach a consensus.” Some of the members were not troubled by his management style and the issue was “dropped.” (T.377) While Gallagher did not take the matter beyond the team he nevertheless had a “problem” with their decision. He stated that his dissatisfaction with the Respondent, however, did not influence his reporting the allegations against him. He explained that “there were times he and I may have had a disagreement with a case, and he was fair enough – I have to give him that – he was fair enough to go with me to the Captain and have the Captain listen to our arguments and make the decision so in that respect, I respected him for that, but he was my Lieutenant. I was going to do what he told me to do.” (T.378)

Gallagher stated that he confronted the Respondent only once concerning his gestures and that was in March 2004 during the last time where Gallagher “believe[d] he was holding a man’s testicles in his hands...and then moving his tongue around as though he was licking them. At that point I stood up and said ‘You are fucked up,’ and I walked out of the office.” (T.378-379) He added that he considered his statement to be insubordinate to the Respondent. He explained that he “was at the end of my rope. I had gotten to the point where I realized what he was doing to me. I was trying to ignore him, get away from it. I asked to be removed from his team and put on the other team. So I could get away from him, and that was it. I just couldn’t take it anymore. That was my way of rebelling.” (T.380) The Respondent did not discipline Gallagher for what he said to him and “all he did was kind of smiled at me. After that, the way he behaved with me

changed. He reduced the amount of time we spent together. He didn't call me into his office as frequently." (T.380)

Gallagher stated that in March 2004, he was not going to allow the Respondent to continue with his gestures. He stated that in May 2004, when the Respondent again stared at his crotch he drafted the complaint letter that he sent to IAB. Gallagher stated that prior to sending the letter, he did not consult with anyone about the Respondent. He stated that it was only after he sent the letter that he told his wife. While he did not directly ask other members if the same thing was happening to them, "indirectly there were comments made along the lines that some of the experiences I was having, where I wouldn't put myself into the position; I would just make a comment about it, and I would get a comment back, and that was kind of how I put pieces together. It was more like a puzzle than a sit down with somebody and say did this happen to you." (T. 382)

Gallagher testified that through these indirect conversations he pieced together enough information that led him to believe that Coppola, Hoffer, St. James, Screen and Curry "at least knew about it. I didn't know if they were particular victims or not, but I knew they knew or were aware about some of his behavior." (T.383) Gallagher believed if they were questioned by IAB they may have information that would "validate" what he was "having to go through." Gallagher included the names of these members of his team in his letter to IAB.

Gallagher further testified that while he never had direct conversations with anyone in the form of "these things have happened to me; have they happened to you?" Coppola approached him after they were interviewed by IAB and acknowledged each others situation in the form of looks and nods and then "we went on our way." (T.383-

384) He realized that Coppola may have been going through the same things as he did when he saw Coppola's behavior prior to submitting his complaint to IAB where "a lot of times he would come out of that office angry, or he would throw something down on his desk, or he would just go take a break out of the office just to get away. Or the Lieutenant would call him and he would cringe. He just didn't want to be in there. I didn't know what that was. Who knew? Maybe he just wasn't having a good time in the Lieutenant's office. I didn't know what was causing it." (T.384) Gallagher stated that he received confirmation that Coppola was experiencing what he did with the Respondent after the charges were made and also from the Supreme Court documents that were filed in the case. He also realized that Hoffer was "more involved that I thought also." (T. 385)

After the IAB investigation commenced Gallagher thought his attorney filed a EEOC complaint. Gallagher testified that prior to making his complaint to IAB, he requested in April 2004, to be taken off of the Respondent's team. He stated that he went to Henig, the Executive Officer, and without giving him a reason, asked to be moved to another team. Gallagher stated that Henig told him that he spoke to the Deputy Commissioner and she refused his transfer. When Gallagher filed the letter with IAB he was still a member of the Respondent's team.

Gallagher stated that he also filed a federal lawsuit against the Respondent and the Department, where he is seeking monetary damages. He stated that money was not the reason why he came forward with the complaint; rather it was "another remedy," due to the Deputy Commissioner not taking any action after he made his complaint to IAB.

Gallagher testified that he believed the Respondent's "behavior to be sexually harassing" because he "found nothing common about the different things that he was doing to me, nothing that would be viewed as normal behavior, either by a person who was having some type of medical condition or not." (T.413) He did not view the Respondent's gestures as adjusting himself which would be done "to move yourself so that you are more comfortable...there was no movement about it other than the fact it appeared he was lightly touching that area on his inner thigh by his genitalia." (T.414) He stated that he was not scratching himself because there is a difference between scratching yourself with your fingernails and touching yourself with the pads of your fingers.

Gallagher testified that the Respondent filled out his performance evaluations for the period January 16, 2003 and January 15, 2004. (DX 3) The Respondent as his supervisor rated him with an overall rating of 4.0 or highly competent and 5 out of 5 for police ethics and integrity. (DX 3)

On cross-examination, Gallagher testified that the "constant part" of the Respondent's gestures or incidents "was the crotch staring. The other ones, the other things...were more intermittent." (T.415) He acknowledged that the reactions he had to the Respondent's stares was that he had to wear looser pants, he had to cross his legs, he held file folders in front of him and he had to take E-days because he was too upset to work. He also stated that there were other aspects or consequences of the Respondent's misconduct and they included the times he would avoid going into his office or having any contact with him and instances where he sought the advice of the other team's lieutenant rather than go to the Respondent for advice.

Gallagher reiterated that from the time the incidents started with the Respondent until April 28, 2004, he did not make any notes regarding the Respondent's conduct. And it was on May 28, 2004 when he was interviewed by IAB that he told investigators that the Respondent failed to submit his overtime in a timely fashion. He stated "I believe I said somewhere along the lines the timekeeper told me Lieutenant Crowe was submitting overtime slips signed on the back where the C.O. would sign it late – later than he originally signed the front part of the overtime slip." (T.422) Gallagher acknowledged that he told IAB that the timekeeper told him that Gallagher was the only one that this was happening to.

Gallagher further testified that he told IAB investigators that the Respondent was hovering around a young Hispanic cadet whose name was Mario Cedillo. He explained by "hovering, he was spending a lot of time with the cadet." (T.424) He further explained that he had no idea what the Respondent was doing with the cadet. He acknowledged that he told IAB investigators that he thought the Respondent had some kind of attraction to young male Hispanic individuals. Gallagher further stated that while he overheard Inspector Wheeler talking to a person about an anonymous letter and the Respondent, he stated that he did not know exactly what was being said between the two and he did not have anything to do with sending the anonymous letter. He stated that the only letter he sent was signed by him.

Gallagher further acknowledged after months of the Respondent's misconduct he told him that he was "fucked up" to his face. He stated that he did not talk to or speak to him in that manner prior to that time because he was afraid and out of respect for his rank he did not speak like that to his supervisors. Gallagher stated that he did not have a

problem disagreeing with the Respondent professionally, when it had to do with cases and case material. Gallagher stated that he was an experienced investigator who had years of experience including eight years with the Los Angeles County Sheriff's office as a deputy sheriff. He stated that when he began working for the Respondent the Respondent criticized his work and at times he felt his criticism was "unnecessary and it bothered him" (T.431)

Gallagher stated that he recently learned that Coppola was listed as a co-complainant in the lawsuit against the Respondent, Deputy Commissioner Zeigler, the Police Department and the City of New York. He stated that he learned of this when the Assistant Department Advocate asked him about the lawsuit; prior to that he had no idea that he was a co-complainant with Coppola. He noted that his lawyer told him that there was a possibility that if he won the lawsuit he might get some money from it. He stated that he had no idea how much money was involved and that he did not discuss the lawsuit with Coppola.

Gallagher stated that while he did not directly discuss the case with Coppola, he believed that Coppola was a victim of the Respondent "according to indirect comments made back and forth with him." He explained "I would throw out a hypothetical situation which would actually be myself and get his response to that. Indirect comments about Lieutenant Crowe and, again, wait for his response to that. It was really, again, like trying to piece a together a puzzle. It was trying to find out from him if he knew about the things that were going on or if he was involved in some way." (T.434) He stated that he began speaking hypothetically to Coppola in the Winter of 2003, 2004. He added however, that he could not say exactly what he could say to Coppola. While Gallagher

said neither he nor Coppola revealed to each other what was happening to them he was reminded that during his IAB interview he stated the following: "So the only other people I really had to turn to were the people I befriended in the house, guys I got fairly close to. One of them is Sergeant Coppola, and after I discussed what had been going on with me, he also revealed some of the things he had gone through with the Lieutenant as well, that he had experienced, so he - he also had gone through some of these same things that I had gone through, and he felt the same way. He just -- he didn't feel he could go any where with it. He was -- he just like -- and then he was able to get off of his team and get into the other team, and he just let it go because he didn't need to deal with that."

(T.435-436) Gallagher explained that that quote did not mean that he had a conversation about the incidents with the Respondent or with Coppola by May 2004 and that he had not confided in him.

Gallagher stated that during the time that he and Coppola worked for OEE0 the two of them went out to lunch together approximately twice a week depending on how busy the week was or sometimes not at all. He averaged out the time they went out to lunch to be two to three times a month. He said that two or three times a month did not necessarily include going out and getting a hotdog and walking back to the office. He stated that he was also friendly with Henig and that they would often speak about computers or magic or other personal interests. He was also friendly with Hoffer and over a year and a half period they had lunch several times. He stated that there were times when he did not see Hoffer due to being busy and that they did not work in the same location for a period of time. He also stated that he had lunch with Hoffer and Coppola at the same time, but he could not remember if Henig had joined them.

When Gallagher was asked if he had told IAB that he had talked about the allegations against the Respondent with Hoffer he stated "Again, I think it was the same – when I told IAB about that, it was the same vein: that I would never directly bring information to another supervisor. I didn't want to put them into – into the place of having to report it, as Department policy regards a supervisor having to do with EEO complaints. So I would use hypotheticals or indirect statements to get his reaction to them." (T.441-442)

He stated that when he talked to IAB about Hoffer he was referring only to Hoffer being a possible victim of the same thing that he was. Gallagher further stated that he did not want to report the Respondent to anyone including Henig because he knew that Henig would have to report that information up the chain of command. He explained that he did not want to report the Respondent because "not only did I feel that it might affect me professionally, but I didn't think it would get investigated properly. I didn't know what would happen, but I didn't think it would be investigated properly, no. I didn't think I would receive proper investigation for the allegations I was making." (T.445) He added that he did not want to complain until March 2004 when he spoke to Sergeant St. James about how the team was being run. If the team had objections to the way the Respondent was running the team they would take it up the chain of command. If the team, however, did not come to a full agreement then the matter would just be dropped and the matter would be left alone. He recalled that the members of the team included St. James, Detective Williams and Detective Greer, but he was not sure who the other members were. When asked by the court to explain exactly what the meeting was about, Gallagher acknowledged that it was about how the team was being run and he gave as an example

that "there were problems with scheduling, with how cases were being handled. It was just a lot of complaints from the different members, how Lieutenant Crowe was handling their case load and actually reviewing their cases, how he was going through the Deputy Commissioner with the cases; things along that line. I am not exactly sure, but if I remember correctly, it is the basic idea behind it. It was all management." (T.448-449) He added that he did not remember if it was he or St. James or both that asked all the members of the team to meet. He noted that the Respondent was not invited to the meeting.

He further stated that he organized the meeting for the members of the team to decide whether they wanted to bring the complaint up the chain of command to the Captain. He stated that the team had not reached a consensus and that they were not in total agreement with regard to bringing the complaint up the chain of command and therefore the complaint idea was dropped. He explained "At least one person wasn't willing to agree with going forward with it. That didn't mean you didn't have a complaint. It just meant they didn't want to go forward up the chain of command." (T.452) He stated that he did not want to unseat or remove the Respondent from his position, rather "we wanted to correct it, whether it be through gentle counseling, harsh counseling; whatever the executive board decided." (T.453) Gallagher stated that two to three months after calling the meeting he wrote the complaint letter to IAB.

Gallagher stated that wearing looser fitting pants did not seem to solve the problem. When asked what did it mean to him by wearing loose versus tight in terms of what he felt he was exposing he stated "I believe at the time, the reason I wore looser fitting was more psychological than anything else. It made me feel like there was a

possibility that I wouldn't have to be subjected to that type of behavior. Whether it actually worked or not, obviously it didn't, because it continued." (T.456-457) The Respondent never did ask Gallagher to go out with him, nor did he ever touch him.

Gallagher stated that subsequent to joining the Department

[REDACTED] Gallagher, due to the September 11 attack, worked a considerable amount of overtime during a two month period. He stated "I worked an extremely large number of hours for that period of time." (T.463) [REDACTED]

(T.469)

Gallagher stated that since joining the Department he was disciplined for using a Department plaque for traveling through the Queens Midtown Tunnel toll booth while assigned to LEGAL. When asked how many times he used the plaque he stated "at the time it was a problem with being able to account for the number of times I used it for business purposes and a number of times I used it for personal reasons, because there was no accounting feature at the Legal Bureau for that so I agreed to whatever they said that I used it for, because I couldn't prove one way or another how I used it so I am not sure exactly how many it was." (T.471) He stated that he had a specific recollection of using it for business purposes and for using to go home. He could agree that it was more than five times, but he could not say if it was more than ten. He added that in order to use the Department plaque he had to roll down his window and show the plaque to the agent on duty. He stated that he was caught because the toll taker copied down the number of the plaque and the license plate of his vehicle. He acknowledged that he knew he was wrong for using the plaque for personal reasons at that time. He added "more specifically, I was misrepresenting that I was using it for Departmental business." (T.474) Gallagher stated that as a result of that conduct he received a command discipline and he had to leave the Legal Bureau. He stated that he was told to choose another command and he was ultimately transferred to the Brooklyn North Investigations Unit. Gallagher also stated that he was disciplined for being involved in a RMP or police vehicle accident when he was a rookie police officer.

Gallagher now acknowledged that he took E-days off because of what the Respondent was doing. He stated that he could not say how many E-days he took off with regards to the Respondent [REDACTED]

He explained that "time records, they don't delineate between E-days, regular vacation days, chart days. It doesn't say in the time records what is. Depending on the command, they may have an E-day log, but that was put into effect at OEEEO later on, I believe it was under Inspector Rubin when they started an E-day log, if I am not mistaken." (T.481)

When asked if he could hazard a guess of how many E-days he took he stated that it would be at least ten days. He added that the only other E-days that he would have taken would have been for his [REDACTED] and that would have been at least ten days for a total of twenty E-days during that one year period.

Gallagher stated that he was out chronic sick several times but he could not give the dates. He stated that he was put on chronic sick A which takes effect if you are out more than three days. He acknowledged during that period in question before June 2004, he reported sick more than three times during that twelve month period. He explained that his periods of absence while he could not say for sure were "more than likely just administrative sick days of two days a piece." (T.485) He stated that being out between the E-days and his sick days he did not believe that it had affected his ability to get his work done.

When Gallagher was asked during his interview with IAB in May 2004 if he mentioned that Sergeant Curry also had complained about the Respondent he stated "Again, through the same methods that I received or – my assumptions that I received from Sergeant Coppola and Sergeant Hoffer, that was how I obtained my information about Sergeant Curry. I have the same recollection with his statements. I can't tell you for a fact what was said and give you...a general idea of how he came about that, with just inferences made....Like I said, I can't tell you exactly what was said." (T.486-487)

He stated that he did remember if Curry “made comments and inferences that lead me to believe that he could possibly be a part of this, and that is evidence by my testimony to IAB.” (T.487) Gallagher acknowledged that he wrote in his complaint letter that he sent to IAB and to the Police Commissioner that he was “unsure if I was being overly sensitive, I sought out advice from my peers and discovered that they were forced to suffer through some of the same behavior that I had.” (T.488)

When asked when the Respondent was touching the inside of his upper thigh over his clothing, was he absolutely sure that he was manipulating his genitals he stated “I saw his hands -- his fingers move up to his genitals. I don’t know exactly what he was touching, because he was wearing his pants.” (T.491) He acknowledged that during the meeting with the other team members no sexual allegations against the Respondent were discussed.

On re-direct examination Gallagher acknowledged that charges and specifications were not brought against him for his prior disciplinary matter. Nor has he ever received charges and specifications since he’s been a member of the New York City Police Department. The discipline he received for the misuse of the plaque was a command discipline and a forfeiture of six vacation days.

When Gallagher stated in his letter to IAB, “I really had to turn – the people I really had to turn to were the people I befriended in the office, guys I got fairly close to. One of them is Sergeant Coppola. He also revealed that – after discussion after going out with me, he also revealed some of the things that had gone on with the Lieutenant as well.” (T.493) Gallagher stated that what he meant by that statement “Unfortunately, IAB didn’t go any further into that question or that topic, but I was – was along the lines

of in inferences, indirect statements made back and forth to the other sergeants using hypotheticals to try and get information from them as to what might have been happening in the office besides what was just happening to me. There was never any direct conversation, and I didn't have any opportunity to finish explaining that during the interview." (T. 494-495)

Gallagher also acknowledged that he told IAB investigators that he "didn't really get into an in-depth conversation with him [Hoffer] as to what happened to him and stuff." (T.495) He added that "the meeting was done in my capacity as a supervisor. I was doing my job" referring to the meeting with the other team members. He explained that "I and Sergeant St. James were taking the complaints of the other members of the team and bringing them together so they could bring them all out with one another. When it came down to what to do with those complaints, there was at least one person and possibly several people that didn't want to go any further than just being heard so we didn't bring it any further than that. There was no reason to bring anything about my personal involvement or my personal problems with Lieutenant Crowe. That had nothing to do with this meeting, it had nothing to do with the other team members, it had nothing to do with Sergeant St. James. That was my problem, and that was the part of the whole issue with this; that this was my problem and I kept it to myself." (T.496) He added that he did not say anything to his friends or his wife because it was embarrassing and degrading and humiliating and that "it wasn't until the several incidents that happened in April and May that I finally decided to go ahead and make this complaint." (T.497)

When asked about what he meant in his letter to IAB where he was quoted as saying that he was unsure if he was being overly sensitive he explained "In a situation

like this, you are full of self doubt. It could be anywhere from, in my case, was my fault all the way to doubting whether I was seeing what I really was seeing, and I was seeing everything that was happening to me. It was just I didn't want to admit it. By throwing out all these hypothetical situations to people, I was getting information back that I was right; that I wasn't the wrong one. That I was the person who was being affected by this." (T.498) On re-cross examination Gallagher acknowledged that in his letter to IAB, in referring to Coppola, he stated that "he told me that the Lieutenant had behaved much the same with him as he had with me. This included the actions of holding his hand in front of him and kissing it." (T. 499) Gallagher acknowledged writing this and also acknowledged that he wrote that "Sergeant Lawrence Hoffer observed the Lieutenant touching his own crotch and leering at Sergeant Hoffer's crotch." (T.499-500) He further acknowledged writing that Curry was subjected to the Respondent staring at his crotch. Gallagher acknowledged that these statements were not based on detailed conversations with these individuals but that he learned from specific allegations.

Sergeant Lawrence Hoffer

Hoffer is a 17-year member of the Department currently assigned to the Transit Bureau Manhattan Task Force where he is the Integrity Control Officer (ICO). He testified that he was assigned to OEEO, in May 2001, as a Sergeant Investigator where he investigated discrimination complaints. Hoffer stated that he was assigned to one of the two investigative teams and explained that "each team had 6 members, maybe two sergeants and 4 detectives, and that number varied...." (T.505) Each team was headed by

a lieutenant and when the Respondent was assigned to the command he was placed in charge of one of the teams. Hoffer was never assigned to the Respondent's team.

Hoffer stated that he investigated "discrimination complaints based upon protective class such as race or religion...Title Seven violations." (T.506) He remained as an EEO investigator until 2003 when he was transferred to the sixth floor and where he was placed in charge of OEEO's CD database. He explained that "the CD database...is a computer program that would track command discipline issued by everybody in the city. Our duties there were contacting ICO's, having them input the data and generate reports" (T.506-507) Hoffer was the assistant manager of the CD database.

Hoffer testified that he was reassigned to the 12th floor, approximately one year before leaving the command in January of 2007. Hoffer stated that during his time on the 12th floor the Lieutenants that were in charge of him were Henig and Screen. He had contact with those supervisors numerous times a day, but he did not have the same frequency of contact with the Respondent. His frequency of contact with Henig and Screen was because "we would go to our own team leader for whatever questions or issues we had regarding a case." (T.508) He stated that he would only go to a lieutenant outside of his team if his lieutenant was out sick or on vacation. Under those circumstances he would discuss his cases with the lieutenant in charge of the other team which was the Respondent. He explained that from 2001 to 2003 when his team leader was out, he "would go to him, but it wouldn't be that frequent so over the course of a few years, six times, eight times? I don't know." (T.510)

He further explained that his frequency of contacts with the Respondent consisted of seeing "each other everyday in passing and say hello or by the copy machine, but as

far as an actual question regarding a case to go to him for a consultation, maybe six to eight times, maybe slightly more.” (T.510) He also stated that at times he would work with members of the Respondent’s team to do GO-15s, or to interview complainants and witnesses and he went into the Respondent’s office to discuss the cases on approximately ten to fifteen occasions.

Hoffer acknowledged that he noticed something unusual about the Respondent in that “he had some nervous habits. In the very beginning in 2001, approximately, I would see him put his hand in his pocket. I saw the hand move. In his pocket.” (T.512-513) He stated that this occurred late in 2001 or early in 2002. He acknowledged that this was shortly after the Respondent was assigned to the office and he observed the Respondent do this gesture with his hand while he was in the Respondent’s office with just him and the Respondent present. He believed that it was only one or two times that he did this and that the door tended to be closed when he and Respondent had meetings because they would be discussing cases.

Hoffer testified that the first time he observed the Respondent with his hand in his pocket “...he would be in his chair. It was a reclining chair, a wooden chair, old fashion chair. I would be across his desk in one of the seats that was there discussing whatever case we were discussing.” (T.514) He stated that he was seated across from his desk in front of his desk and “that time his hand was in his pocket and I would see his hand move. I don’t know how to characterize it. Nothing radically unusual to me.” (T.515) When asked how long this gesture lasted he stated “very briefly. Two seconds, three seconds? I don’t know.” (T.515) Hoffer further testified that the second incident occurred during the same time frame as the first incident, but he could not remember

exactly when it happened. When Hoffer was asked if he knew what the Respondent was touching when he had his hand in his pocket he stated "I don't know what he was touching with his hand, no, but it was in his pocket. Would that be near his groin area? I suppose it would be." (T.515) He added that the second incident was within the first few months of the first incident in early of 2002.

Hoffer acknowledged that the Respondent stared at him in an unusual way in that "he would seem to glance at the waist area. Below the belt line." (T.516) He further explained that the area the Respondent stared at was his genital area. (T.516) When asked where he was when it happened he replied "I believe I would be in his office at different points in time to around the same time frame in 2002, give or take. It just seemed like a longer glance than an average glance; something that I happen to notice." (T.516-517) Hoffer described the circumstances of the staring as "probably the same set up. Either I would be standing or sitting in his office, and I just happened to notice that his eyes would glance, a longer glance than I would expect." (T.517) Hoffer stated that this type of incident occurred "a couple of times. In retrospect, it would be an uncomfortable feeling, of course, but I didn't pay any attention to it at the time. It just seemed like an unusual kind of quirky behavior that the Lieutenant had." (T.517)

Hoffer stated that he knew Coppola and that Coppola was on the Respondent's team. He did not know Coppola prior to coming to work for OEE0. According to Hoffer, Coppola was previously assigned to OEE0 when he arrived and that his relationship with Coppola was friendly and cordial. In 2002 he and Coppola "could have gone to lunch rarely. At different points it could have been twice a week. We could have ordered in and -- it could have been twice a week." (T.519) Hoffer has not maintained a

friendship with Coppola since he left OEEO and during the time that he would see Coppola he did not discuss any of the allegations concerning the Respondent.

Hoffer stated that Gallagher was another sergeant on the Respondent's team. He was assigned to OEEO after Hoffer but he did not know when. He added that he did not know Gallagher prior to being assigned to OEEO. When asked about the nature of his relationship with Gallagher, Hoffer stated "the same as everybody in the office. We were friendly. We had coffee, we went to lunch sometimes...everybody went to lunch at certain points. At certain times we would order together. It was nothing different than anyone else." (T. 520) Hoffer further explained that "some people would go to lunch with other people one week, or a group would go, or we would order in something, or if people have a GO-15 going on, different people go at different times." (T.520) He stated that from the time Gallagher was assigned to OEEO thru 2004 he went to lunch with Gallagher maybe once or twice a week. Since Gallagher left OEEO he has not maintained a relationship with him.

Hoffer testified that he learned about the allegations against the Respondent from the newspaper. He was also called by IAB, in 2004, to be interviewed regarding the allegations against the Respondent. He stated that during the time that he was in OEEO he did not discuss the allegations concerning the Respondent with Gallagher. He stated that when he went down to IAB he believed "there were allegations against him [Respondent] and also against the Deputy Commissioner and also against the Inspector." (T.522) He stated that he gave a statement to IAB because he was ordered to and noted that prior to giving his statement he did not make any allegations against the Respondent. He explained that "I had no complaints against Lieutenant Crowe...."(T.523) He

acknowledged that he did not have anything to do with the allegations against the Respondent in the EEOC case. He also denied having any part in the lawsuit that is pending against the Respondent nor has anyone approached him about joining the lawsuit against him. He also acknowledged that from the time he gave his statements to IAB he did not discuss the allegations against the Respondent with Coppola or with Gallagher. He added however that "we did discuss that it was in the newspaper." (T.524) When asked what he discussed about the case he stated "it was common knowledge in the office. I don't know who had a discussion. It was pretty common knowledge," referring to the allegations that were made against the Respondent." (T.524)

On cross-examination, Hoffer stated that he had been to lunch with Coppola approximately forty times while he was at OEEA and with regard to discussing the Respondent's conduct he and Coppola possibly discussed "quirky behavior" and the handling of cases. (T. 526) He added that he did not recall Coppola complaining to him about being sexually harassed by the Respondent; "he never really got into it, no. He was maybe unhappy on the team. Everyone on the team was unhappy working with Lieutenant Crowe. He just was not happy about being on the team." (T.526) Hoffer further explained that "we didn't have him as the focus at lunch time. We would talk about do we want pizza or Chinese food, and then go and have it and talk about fixing our homes." (T.526-527) He stated that Coppola spoke to him about personal things regarding his life but he never specifically spoke about his financial circumstances.

[REDACTED]

[REDACTED]

[REDACTED] (T. 527) When

Hoffer was again asked if Coppola told him that he was upset by some kind of sexual misconduct that the Respondent was committing against him Hoffer stated "I don't recall discussions where he was specifically upset about being sexually harassed by Lieutenant Crowe, no." (T.528) Hoffer also stated that he did not recall saying to Coppola that he was being victimized by the Respondent.

Hoffer stated that he had lunch with Gallagher approximately 10 to 15 times prior to Gallagher leaving OEEO. He recently saw Gallagher at the Police Academy in passing and they shook hands as they passed in the hallway. When asked if he and Gallagher discussed anything about the Respondent Hoffer replied "absolutely not." (T.529) Hoffer stated that with regard to Henig he had lunch less frequently with him, "maybe once every two weeks" or less. (T.530) He stated that he did not believe Coppola was present when he had lunch with Henig.

Hoffer stated that he learned of the specific nature of the allegations of the Respondent "through the IAB interview. That is when I surmised there was something - an official allegation made of some sort." (T.531) He stated that prior to being called by IAB, he did not specifically know what the interview was going to be about. He stated "there was turmoil in the office. The Deputy Commissioner did not get along with the Commanding Officer so I said that could have been something. My team leader said don't go to the other team leader when she is not present. So there were a few things that could have been going on at that point. I did not have any idea of the focus of the question, no." (T.531-532)

Hoffer stated that prior to being interviewed by IAB he spoke with Sergeant Peruggia who was his union delegate. Hoffer did not recall if Peruggia told him about

the subject he was going to be questioned about and he “assumed the whole office was being interviewed.” (T.533) During his IAB interview, he described the Respondent as a very nice person and a very good person. He stated that going into the interview he did not try to make a sexual harassment case against the Respondent. He also denied that he was a victim of sexual harassment by the Respondent and explained that “in the EEO, I am a supervisor, or was a supervisor. I would be required to report sexual harassment if I felt it was occurring to me or someone else in the office, just as anyone else in the Police Department.” (T.534) He added that he did not observe anything that he considered to be sexual harassment taking place in the office.

The Respondent's Case

The Respondent called Doctor Karen W. Landau, Federal Bureau of Investigation (FBI) Agent William E. Kelly (retired), Lieutenant Georgianne Kraft, Sergeant James Curry (retired), Chief Steven Kennedy, Detective Debra Williams, Chief Raymond King (retired), Detective Sanilda Wallace, Sergeant Nicola Cantatore (retired), Captain John Benevento (retired), Detective Janice Grier, Lieutenant Richard Mulvaney (retired), Police Officer Mario Cedillo and the Respondent testified in his own behalf.

Karen Landau, M.D.

Landau is a dermatologist. After medical school she spent three years doing her residency at Mount Sinai Hospital in New York in internal medicine. One of those years was spent as the chief resident of internal medicine and she is board certified in internal

medicine. She is also board certified in the field of dermatology and has been in private practice since 1982 and is affiliated with and teaches at Mount Sinai Hospital.

Landau testified that a dermatologist deals with "anything on the skin, hair, nails, the oral cavity, the genitalia." (T.563) She stated that she began treating the Respondent in 1993 and between the years 2001 through 2004 she treated him for "a variety of things including fungal infection of the feet, discoloration of the skin, very itchy rash on his entire body, which was presumed to be scabies, a severe Candida or fungal infection of the scrotal area, a condition called pressure urticaria, whereby wherever the skin is scratched or where ever there is pressure such as a sock or a belt or underwear rubbing against the skin one can get a hive due to excess of histamine in the skin." (T.563-564) She stated that in 2003 there were three treatments within one month for "a rather recalcitrant groin fungal infection which also affected the scrotal area." (T.564) She added that the infection is called tinea cruris. She further testified that the Respondent also had "a tendency to eczema which is an inherited propensity to have skin that is itchy, drier or more sensitive than the average person's skin." (T.564)

Landau stated that the symptoms of these various skin conditions are "primarily itching, burning and general discomfort. I have had patients come in literally distracted from doing their daily tasks because it has been so uncomfortable for them." (T.564-565) She also stated that tinea cruris is a very commonly known as jock itch." (T.565) Landau then viewed a photo which she stated appears to be a skin condition called tinea cruris or

jock itch and while the photo is not of the Respondent's condition it is similar to what she treated the Respondent for. (RX F)¹⁴

Landau further testified, that with regard to treating the conditions that she previously mentioned, "by and large, it takes a week for the symptoms to ebb, but the treatment course is a minimum of two weeks." (T. 566-567) She further explained that "if one is lucky, the pressure urticaria or hives, as we would call it, would respond rather dramatically to oral antihistamine." (T.567) She acknowledged that this condition is not a constant one and rather the patient has episodes or flare ups. She testified that the hives usually respond rather quickly to the oral histamines.

Landau testified that jock itch usually affects "the upper inner thighs, and often times it could affect the scrotum." (T.568) She stated that jock itch is resolved "with treatment, which is traditionally applied anti-fungal, anti-jock itch cream, one starts to see improvement in symptoms in approximately a week. Some people take longer than a week. The recommended course of treatment is a minimum of two weeks. Some individuals, because there are complicating factors, such as a history of eczema, it can take longer to respond." (T.568)

Landau stated that the conditions that she described she treated the Respondent for, she treated him seven times during the periods from 2001 through 2004. Landau was asked what condition is affected by the pressure of someone's belt or clothing and she stated "the particular type of hives I was talking about. We call it pressure urticaria. Urticaria equals hives. That can be brought on by any kind of pressure to the skin." (T.569)

¹⁴ The Court accepted the photograph, which was more like a computer print-out, into evidence under RX F, as a "likeness" of the condition that she treated the Respondent for and not as a photograph of the Respondent's actual condition.

On cross examination Landau stated that the first time she treated the Respondent for jock itch was in 1993. The next time was on February 2, 1996 and March 19, 1996. The next time was on December 23, 1997 and July 3, 2002. She stated that she saw the Respondent on November 21, 1999 and February 20, 2001 but those two visits were not for jock itch. Landau further testified that after July 3, 2002, she treated the Respondent on March 20, 2003, but that was not for jock itch but a different condition. She explained that she could "assume that it was body lice, because it resolved with Lindane, which is an over the counter anti-lice medicine." (T.572)

Landau stated that on April 3, 2003, April 17, 2003 and May 2, 2003, she also treated the Respondent for jock itch and noted in her records that the condition appeared to be clearing and responding to medication. Landau added that during the years 2000, 2001 and 2002 she did not treat the Respondent for jock itch. Landau also stated that she treated the Respondent for eczema which is characterized mainly by overly itchy skin. She acknowledged that the Respondent had eczema in a number of areas on his body.

On re-direct examination Landau was asked how prevalent is jock itch and she stated "it is one of the most common situations that one encounters, in particularly when you have a large percentage of males in your practice. One of the precipitating factors is perspiration and friction, which can cause minuscule breaks in the skin which makes the body skin more vulnerable to the infection so if one is exercising, obviously that is a situation where those factors are increased." (T.575) Landau stated that jock itch can be treated not only with prescription medication but there are many excellent over the counter medications that she routinely prescribes and that it is better than many of the prescriptions that are available. When Landau testified that a condition is resolved she

means "that the individual is almost perfect at that time. Generally speaking, when I make that notation, the patient tells me that it is – that the itching and discomfort and by and large controlled." (T. 576)

William E. Kelly

Kelly testified that he owns a security company where he does investigations and polygraph tests. He stated that on August 23, 1963, he was sworn in as an FBI agent and attended FBI training school and graduated on September 27, 1963. In 1974, while he was in the FBI he decided to get into polygraphs. He stated that he was part of the first class that the FBI put together which consisted of 12 agents from all around the country. He stated that during his time with the FBI he conducted approximately 200 polygraph examinations as an FBI agent. He added that "I did polygraphs on suspects in bank robbery cases. I did Calvin Klein's daughter [who] was kidnapped, and I polygraphed the baby sitter, who subsequently pled guilty and advised after my polygraph where co-conspirators were and where the ransom money actually was." (T.580) Kelly retired from the FBI on May 30, 1987 and after working as a security and fire safety director for Manhattan East Hotels, which consisted of nine hotels in Manhattan, he decided, in 1995, to incorporate himself into his own business called WEK. Since 1995 he has conducted approximately 3,000 polygraph examinations and is a member of the National Polygraph Association.

Kelly explained that a polygraph test, using a polygraph instrument, is comprised of relevant questions pertaining to the issue at hand. He stated that "the polygraph instrument measures the person's breathing, measures their heart beat and blood pressure and measures their, what is called galvanic skin response." (T.583) Kelly stated that he

owns his own polygraph machine and routinely has the machine calibrated and checked for accuracy.¹⁵

Kelly testified that on October 5, 6 and 7, 2004, he administered polygraph tests on the Respondent. He stated that his machine was in working order because at the end of August of that year he sent the instrument to a person by the name of Ron Decker in Alabama who was a certified polygraph examiner and also a person who calibrates and fixes polygraph machines. The machine was calibrated and checked for accuracy at that time.

Kelly stated that of the different types of test that can be used for polygraph tests he uses the one called "relevant/irrelevant test." He explained that "what that consists of is the first two questions are irrelevant questions, what is your name, where do you live. The third question is my control question, and I use a question 'have you ever stolen anything worth more than ten dollars,' and you may have it hard to believe, that 99% of the people that I test say no. That to me is a known lie. Everybody has stolen ten dollars. The fourth question I use is "Are you married?" The fifth question is a relevant question concerning the topic. The [sixth] question, irrelevant. The [seventh] question, relevant. And it goes like that; irrelevant to relevant. The reason you use an irrelevant question after a relevant is in the event the person may respond or react to a relevant question, you use an irrelevant after it so that the body gets to subside after the reaction." (T.585-586)

Kelly further explained that where breathing is used as a measure, the breathing response to a question is that it could get deeper or heavier or can cease to take place because people can hold their breath during questioning. With regard to heart beat "it

¹⁵ Mr. Kelly was qualified as an expert by the court as a polygraph examiner with regards to the testimony that he was going to give in this case.

will get more rapid, usually, and blood pressure would increase.” (T.587) He stated that these reactions are recorded on a chart; everything is measured from the chart. Breathing is measured by placing a black tube across the chest for women and across the stomach for men, because women breathe mostly using their chests and men breathe mostly using their stomachs. He stated that the galvanic skin response is measured by placing electrodes on the subject’s fingers. He explained that “we have electricity on our bodies at all times. What it does, I honestly don’t know. If a person experiences stress because they lie they will perspire. The more water on the surface of your skin, the faster the electricity moves. That is measured on the chart also.” (T.588)

Kelly testified that he determined the relevant questions to ask the Respondent during the time that he, the Respondent and the defense counsel sat in the defense counsel’s office. He stated that the nature of the allegations and the charges were explained to him by the defense counsel and “based on those charges” the three of them “formed the questions to satisfy the charges.” (T.588) When the Court inquired if the Respondent was aware of the questions prior to the test Kelly stated, “Oh, sure. You have to tell them the questions ahead of time. It is not like T.V. where they sit you down and beat you over the head with questions that you didn’t know anything about. You can’t do that. That’s doesn’t work.” (T.589) He added that the Respondent knew the exact order of the questions and the exact wording of the questions prior to the test.

Kelly testified that he conducted the first polygraph test of the Respondent on October 5, 2004. He stated that he connected the Respondent to breathing tubes one on his chest and one across his stomach. Kelly “put electrodes on his fingers, and I put the arm cuff that the doctor uses to get your blood pressure, I put that on him for his cardio.”

(T.590) He stated that after he attached the instrument to the Respondent he adjusted the instrument to the Respondent's body and then began to conduct the series of questions that were developed prior to the test.

Kelly stated that he asked his series of questions a total of three times during that first day of testing. Once the Respondent was "attached to the instrument" he began asking a series of questions. He stated that "the first question, 'Is your name Kieran?' Second question, 'Do you live in New York City?' Third question, 'Have you ever stolen anything worth over ten dollars?' Fourth question, 'Are you married?' And the fifth question, 'Did you ever touch Sergeant Coppola with intent to seduce him?' Sixth question, 'Were you born in 1958?' Seventh question, 'Did you ever rub your genitals for self-gratification in the presence of Sergeant Coppola?' Eighth question, 'Were you born in Queens?' Ninth question, 'Have you ever made a gesture in order to seduce Sergeant Coppola?' Tenth question, 'Did you graduate from high school?' Eleventh question, 'Did Sergeant Coppola ever complain to you that you were creating a hostile work environment?'" (T. 590-591)

Kelly explained that "what you do, when you ask a question, he answers it, and then you pause 5, 10 seconds. Then you ask the next question." (T.590-591) He added that those questions required yes or no answers only. He stated that he reviewed all of the questions prior to giving the test to make sure that the Respondent could answer yes or no to each one. When asked how many times he asked those questions Kelly replied "three tests." (T.591)

Kelly testified that "the overall results of the three tests indicated to me, the charts indicated to me, that he was telling the truth. He had some reaction on question No. 5,

‘Did you ever touch Sergeant Coppola with intent to seduce him?’ He had a little reaction on test No. 1. In the last question, ‘Did Sergeant Coppola ever complain to you that you created a hostile work environment?’ he had a little reaction to that on test No. 2. All the other questions on the other test, there were no significant reactions on the charts.” (T.591-592) When Kelly was asked what is the significance of a slight reaction on one question he stated “that can happen, God only knows why that happens. The body is a very intricate machine. It doesn’t always do what it is suppose to do. If a person is truthful on two out of three tests, to me he is truthful.” (T.592)

Kelly testified that on October 6, 2004, he conducted a polygraph test of the Respondent concerning allegations made by Sergeant Gallagher. Questions numbered 1, 2, 3, 4, 6 and 8 were the same questions that he asked in the tests given on October 5, 2004. For questions that were different on October 6, were: Number 5, “Did you ever rub your genitals for self-gratification in the presence of Sergeant Gallagher?” Number 7, ‘Have you ever made gestures in order to seduce Sergeant Gallagher?’ Number 9, ‘Did Sergeant Gallagher ever complain to you that you were creating a hostile work environment?’” (T.592-593) When asked how many times he asked those questions Kelly replied “Three times.” When he was further asked what the results of asking those questions were Kelly stated “the charts indicated to me that he was telling the truth on all questions on all charts except for chart No. 2, question No. 5, ‘Did you ever rub your genitals for self-gratification in the presence of Sergeant Gallagher.’” (T.593) Kelly explained that there was a reaction to that question which meant that “he could be not telling the truth or he could be upset about the question. It could be about anything. The

other two tests have no reaction to that question. My conclusion is that he was telling the truth; was not being deceptive.” (T.594)

On October 7, 2004 Kelly administered a final polygraph test to the Respondent. The questions he asked during that testing period that were not asked on the previous tests were “Fifth question, ‘Did you ever rub your genitals for self-gratification in the presence of Sergeant Hoffer?’ Seventh question, ‘Have you ever stared at Sergeant Hoffer’s crotch in order to seduce him?’ Ninth question, ‘Did Sergeant Hoffer ever complain to you that you were creating a hostile work environment?’” (T.594-595)¹⁶ Kelly stated there was no reaction during test 1 of the relevant questions and there was no reaction to test 3. He stated that there were reactions to test 2 “to the three relevant questions.” (T.595) When he was asked what was the scientific significance to those reactions in terms of his conclusions he stated “those things happened. I don’t know why they happen, to be honest with you, but since he passed the first and the third tests without any reactions whatsoever, my conclusion is that he is telling the truth. If I were to have taken one reaction in all the polygraphs that I have done, I would say probably 90% of the people would have failed.” (T. 596)

On cross-examination, Kelly stated that he bought his polygraph machine in 1995 when he started his business and at that time the machine was used. He stated that it’s commonplace to buy a used machine because they can be recalibrated. Kelly stated that as a result of the three days of polygraph testing of the Respondent he generated three separate charts. (Department Exhibits 4, 5 and 6 representing October 5, October 6 and October 7 respectively)

¹⁶ The questions to the test on October 5, October 6 and October 7 along with the corresponding graph pertaining to the test were subsequently admitted into evidence under Department exhibits 4, 5 and 6 respectively.

Kelly testified that with regards to the charts there are tracings on each one of them. "The top one is breathing. The second one is the breathing. The third one down is the...galvanic skin response. The fourth one down is the cardio [response]." (T.602-603)

Kelly testified that polygraph examinations are not admissible in federal criminal court and that they are not an exact science. He acknowledged that on the day of each test he met with the Respondent and his attorney, Ms. Koshetz, just prior to conducting the test and all the discussions pertaining to the test happened at the meeting on the same day the test was given. Kelly stated that the questions that he previously testified to were the only questions asked of the Respondent in preparation of the test. He stated that the background questions are located on the worksheets and are the normal questions that he asks everybody no matter what type of polygraph. He added that he also asks each person submitting to a polygraph test, including the Respondent, whether they have taken medication that day. He stated that he did not recall what the Respondent's answer was as to whether or not he had taken medication on the day of the test.

Kelly stated that prior to his creating the questions for the polygraph tests he did not review the charges and specifications in this case. He stated that he relied on the defense counsel and the Respondent for any information regarding the allegations against the Respondent.

Kelly stated that on October 5, 2004, prior to administering the test he met with the Respondent and his attorney for approximately two to three hours. He stated that they met for that period of time to formulate the questions asked during the test. He stated that while they reviewed the questions on all three days of testing, he believed that "we formulated the questions for the most part during the first meeting for all three test, and

then for the second test we reviewed the questions again. We went over what they were going to be, and then the third day we went over the different ones for the third day.”

(T.609) He stated that the reason he ran the test on three separate occasions was because “it has been my practice not to do two polygraphs on two different subjects or relevant questions on the same day.” (T.609)

Kelly was then asked, regarding the test given on October 5, 2004, who formulated question No. 7 where the Respondent was asked if he ever rubbed his genitals for self gratification in the presence of Sergeant Coppola, Kelly replied “the three of us together.” (T.609) While he did not remember exactly what was said between the three of them he explained that “the three of us were in the room, and we formulated the question based on, you know, information I had relevant to the charges.” (T.610)

Kelly was asked whether he understood what a compound question was and he responded “It is basically two questions.” (T.610) He was then asked if question No. 7 where the Respondent was asked “Did you ever rub your genitals for self-gratification in the presence of Sergeant Coppola” if that question was just worded “Did you ever rub your genitals?” would he get a different answer than the question “Did you ever rub your genitals for self-gratification?” he responded “Well, I don’t know that that would address the situation if somebody had an itch or whatever. It could have happened that somebody would rub their genitals and scratch themselves not for self-gratification.” (T.611) He stated that he did not remember if “self-gratification” was one of the elements to the charges against the Respondent.

With regards to question No. 5 from the October 5, 2004 polygraph test, “Did you ever touch Sergeant Coppola with the intent to seduce him?” Kelly stated that that

question came about as part of the same discussion that he, the Respondent and the Respondent's attorney were having. He stated that he did not feel that that was a compound question because "I am asking him if he ever touched himself with his intent to do something...with his intent to do something." (T.612) When asked if he was aware if the intent to seduce was an element of the charge against the Respondent he stated "No. I would think so based on the question that was formulated by our discussions." (T.613) He added that he did not see the actual charges and specifications.

Regarding the fifth question during the October 6, 2004 test, "Did you ever rub your genitals for self-gratification in the presence of Sergeant Gallagher?" Kelly was asked if he considered it a compound question and he stated "no." When he was further asked if the question had been "Did you ever rub your genitals in the presence of Sergeant Gallagher?" would he have had a different answer he stated "it could, sure, yeah, if he had an itch. He could have rubbed, you know, his genitals if he had an itch." (T.615) Kelly stated that he did not know whether the element of self-gratification was an element of the charge against the Respondent.

Kelly was then asked, for the October 6, 2004 test, regarding question No. 7 "Have you ever made a gesture in order to seduce Sergeant Gallagher?" whether he considered that a compound question and he stated "No." He explained that "again, because of the -- his intent, what was his intent in what he did. I think that is important when you ask a question." (T.615) When asked if he was aware if intent was an element of the charge against the Respondent he replied "No."

Regarding the test he did on October 7, 2004, question No. 5 "Did you ever rub your genitals for self-gratification in the presence of Sergeant Hoffer?" Kelly did not

believe that that was a compound question and for "the same reason. I think it has to do with intent," that being the intent of Lieutenant Crowe. Once again he did not know whether intent was an element of the charges against the Respondent.

Referring to the questions regarding Sergeant Hoffer about the Respondent staring at his crotch, Kelly stated that that question was generated through a conversation he had with the Respondent and his attorney. He also stated that he did not believe that that question was a compound question. When he was asked if he had asked only "Have you ever stared at Sergeant Hoffer's crotch?" would he get a different answer if he did not add the words "in order to seduce him" he stated "I don't think so." He admitted that it does require an element of intent to seduce someone as an element in that question. He did not know, however, if seduction or the element of seduction was an element of the charge against the Respondent.

Kelly testified that the scoring method that he used on the polygraph tests was that he compared "the known lie question or control question to the relevant questions. If the person reacts more to a control question or an irrelevant question for some reason, then they are truthful. If they react more to a relevant question than to a control question, then they are lying." (T.618-619) Kelly stated that a person's reactions could mean that the blood pressure goes up or breathing gets heavier or non existent and the other indicia as he previously testified to. He stated that he did not use a numerical testing score on the test that he conducted on the Respondent. When asked if he had any documents indicating how the Respondent scored on the various polygraph tests he stated "Well, if I see reactions, I mark the chart itself." (T.620)

Kelly acknowledged that for the October 5, 2004 tests, test No. 1, the Respondent had a reaction to question No. 5, and that on test No. 2 the Respondent had a reaction to question No. 11. He further acknowledged that based upon the fact that for both of those questions on different tests that two out of three showed he was truthful -- that he made the determination that he was being truthful.

Kelly further explained with regard to the reactions of the Respondent he stated that again referring to the test on October 5, 2005, that "on the first question that counsel asked me about question 5 on test number 1, he had a reaction with his blood pressure, and actually, if I could kind of show it to you it went up. It went up, his blood pressure went up (T.621-622), whereas question 7 you could see there is nothing there. Question 11 on the first test there is nothing there. Question 9, which is relevant, it went down." (T.622) Kelly acknowledged that the pressure going down is what he meant by a reaction. He further explained that with regards to the Respondent's blood pressure "it could have gone up, or it could have been a reaction of the breathing or could have been a reaction to the GSR. It would be a major reaction" (T.622) He added that the reactions of the Respondent that occurred on October 5, 2004 were "one was for test 1 or one was for test 3." (T.622)

Kelly acknowledged that for the October 6, 2004 test, the second time he ran the test question No. 5, "Did you rub your genitals for self-gratification in the presence of Sergeant Gallagher?" the Respondent had a reaction. (T.623) He further acknowledged that based on the fact that tests 1 and 3 did not have a reaction he decided that the Respondent was being truthful.

With regard to the test given on October 7, 2004, where he asked the Respondent questions with respect to Sergeant Hoffer, he acknowledged that on test 2 all three relevant questions had a reaction. He again acknowledged that based on test 1 and 3 that since the Respondent did not have a reaction he determined that he was being truthful.

Kelly stated that he was paid for his services with regard to conducting the polygraph tests of the Respondent and for testifying at trial.

On re-direct examination Kelly testified that he did not think that a lie detector test can be beaten by a person taking tranquilizers. He also polygraphed individuals who took Valium and they both flunked the test. Kelly was asked if someone who is gay for example, could that influence their reaction to test questions he responded "Yes. What can happen and has happened on numerous occasion with me, when I ask a question 'Are you married,' I can get significant reactions from people if they are gay, if they might be divorced and are upset about the divorce, if they are fooling around on their partner, you know, for various and sundry reasons." (T.627)

Kelly was then asked how he arrived at his standard of determining that if someone is telling the truth if they answer truthfully 2 out of 3 variations of the same question, he responded "Well, actually, to me it is common sense. If a person reacts truthfully twice and has a reaction that would indicate lying on another one, I would go with the two reactions being truthful over one that could be, you know-- have other reasons to reacting to it." (T.628)

On re-cross examination, when Kelly was asked if he was familiar with any methods that people could use to evade detection in a lie detector or polygraph test he stated that he's heard about Valium and other various drugs and that other methods are

that "if a person understands the way a polygraph works, there are physiological things you can do to defeat it. Squeeze your rear end and you will get a reaction, and if you know when to do that, you could throw the whole test off. You can pinch yourself. There is a lot of different things you can do physiologically to make a reaction occur if you know when to make the reaction occur. If you do that and make the reaction occur on the control questions, you are going to have a big reaction and nothing on the others."

(T.631-632)

Lieutenant Georgianne Kraft

Kraft is currently the ICO of the Detective Borough Bronx since January 2004. Prior to her assignment to Detective Borough Bronx, Kraft was assigned as the ICO and Administrative Lieutenant in OEE0. She explained that as the Administrative Lieutenant she checked the roll call, accounted for the overtime and payroll, supervised the reception desk, administrative support staff and the ordering of supplies. She stated that she was assigned to OEE0 from March 2001 to January 2004, a period of approximately three years. [REDACTED]

Kraft testified that she knew Coppola before she worked at OEE0 because they grew up in the same neighborhood, a couple of blocks from each other. Kraft also stated that she knew Gallagher when she worked as a police officer for him in the Legal Bureau for about 10 months in 1997. She also worked with Hoffer prior to being assigned to OEE0 when they worked together as sergeants in the 100 Precinct. She stated that she also knew Mark Henig who was a Captain at OEE0.

Kraft stated that Coppola and Gallagher were friendly and would go to lunch together. She stated that Coppola and Hoffer were also friendly towards each other and

that they also went to lunch together and she believed that for a time that they also went to the fitness center in the building where they worked. She stated that Coppola was also invited to [REDACTED], which Kraft declined to attend. She added that Coppola, Gallagher Hoffer and Henig would go out to lunch approximately three times a week, not necessarily together but in a mix group.

[Kraft reviewed a diagram in court of the OEEO command located on the 12th floor at One Police Plaza (RX G).¹⁷ Kraft acknowledged that RX G fairly and accurately represented the configuration of the work stations and offices in that command when she worked there from March 2001 to January 2004. Kraft put initials in spaces where she recalled various people had their work stations during the period when she was there. She put "K" in the box where it indicated the ICO's office, she put "C" in the area where Coppola had his work station, "G" in the area where Gallagher had his work station, "KC" in the area where the Respondent or Kieran Crowe had his office, "CO" and "XO" in the areas where the commanding officer and the executive officer had their offices, "DC" in the area where the Deputy Commissioner had her office and "H" where Hoffer had his work station. She stated that Hoffer worked on the 12th floor until mid 2003 and then he went to work on the 6th floor.]

Kraft testified that the area directly outside the Respondent's office contained a counter, a microwave, a refrigerator and a coffee maker. There was also a copy machine and a fax machine and an area where there were chairs for people to sit. [Kraft marked the area where the copy machine and the fax machine and the various other things that she mentioned on to the diagram.] Kraft stated that there was anywhere from 20 – 25

¹⁷ It was stipulated to by the parties to this proceeding that the diagram depicted in RX G represents the OEEO office as it appeared three weeks prior to trial and not necessarily accurate to the time of the alleged incidents.

people who worked in that office and that there was a lot of traffic in that area outside of the Respondent's office.

Kraft testified that Coppola indicated to her that he was dissatisfied with his job. She explained that "I guess there were issues he had with the workload and the performance that was required of the assignment." (T.650) When asked if Coppola would ask for overtime she stated that he "would consistently ask for overtime, and I would offer him overtime for the uniform detail after he asked for it, and he was never available to go with it afterwards. He would complain that he wasn't getting overtime, but yet when I offered to give him overtime he was unavailable to do the overtime." (T.651-652)

Kraft stated that Gallagher did not complain to her about his working conditions or about the command. When asked if she got the impression that he was a contented worker she stated "I had worked with Gallagher before so he wasn't contented in general so I had a prior relationship before him coming to OEEQ, and he wasn't content in general." (T.652) She added that as far as Gallagher's attendance he would "go sick 3 times a year, and at times he was chronic." She explained that "you can go sick three times a year, not calendar year. It is three times in a 12 month period. After that if you go sick a fourth time within that 12 month period you become Chronic A. That means you get extra supervision from the Medical Division Health Services. That is frowned upon." (T.653)

Kraft described the Respondent's work habit as "he was very involved in his cases. You know, he was very involved in the investigations. He was very thorough from the minute the complaint came in until it carried through the investigations; he was

involved...in every facet of the investigation.” (T.654) When Kraft was asked if there was any dissatisfaction in the command with the Respondent’s management of his team she stated “dissatisfaction from the investigators who were on his team. Dissatisfaction in the fact that he was very involved, yes. They were dissatisfied with that, his team members....It was more work for the investigator because Kieran was so involved.”

(T.655) Kraft testified that to her knowledge the Respondent did not attempt to block the transfer of Coppola or Gallagher from his team of investigators.

Kraft denied seeing the Respondent inappropriately touch Coppola or himself in the office. She acknowledged that she is familiar with the procedure for processing overtime at the command and that after a member of the Department fills out an overtime slip “it would go to their supervisor for approval, and...in that command I would sign with the commanding officer on the overtime slips so it would get two approvals, and then go to payroll for processing.” (T.662-663) When asked if she would notice if someone was intentionally holding up overtime slips she stated that she would because “you are suppose to put it in after you earn it -- if you hold it and it doesn’t make it in for that time period for that week, then they have to put it in for following week to payroll, and payroll doesn’t like it. They have to do adjustments. (T.663)

Kraft testified that the Respondent had “a very good reputation. He was definitely by Department guidelines and Department procedures. He was very thorough. He cared a lot about his investigations. He was a good writer....Kieran was the type of person that would say ‘please’ and ‘thank you,’ hold the door for you. He was a gentleman.” (T.663-664)

On cross-examination, Kraft testified that her office was on the other side of the office from the Respondent and she could not see his office from where she was located. She stated that the Respondent's office was located next to the office of the Lieutenant who was the team leader of one of the two teams in the office. [Kraft then marked the space next to the Respondent's space on RX G and placed "other team leader" in that space to indicate the second lieutenant's office.]

Kraft acknowledged that when you entered the OEEO office you pass by the reception desk and if you made a left turn from there you would be heading in the direction of the Respondent's office. She stated that the traffic near the Respondent's office was heavier than anywhere else in the office. She further stated that the Respondent's office had a door leading into his office, but the office did not have any windows that allowed you to see into the inner part of the office. She acknowledged that the door to his office could be closed and once it was closed there was no way for anyone on the outside to see what was going on inside his office. While Kraft acknowledged that she could not see into the Respondent's office when the door was closed, she could hear what was going on in his office but "not every occasion, but there were times I was by the coffee machine that Kieran would open his door and say we were very loud by the coffee machine and he was trying to conduct an interview over the phone; if we could kindly be a little quieter." (T.668-669) She added that "if I was by the office coffee machine, I could hear inside his office yes" When asked if she could hear everything that went on in his office she stated "not everything. I wasn't over by the coffee machine all the time." (T.669) She added that while she did hear conversations inside the

Respondent's office at times, she nevertheless could not see into his office when the door was closed.

Kraft stated that she recalled seeing Coppola and Gallagher in his office at times. She acknowledged that if a person was in the Respondent's office and the Respondent was touching himself that she would not be able to see that if the door was closed.

Kraft stated that it was the investigators who criticized the Respondent for his management style, but she could not say who in particular complained. She also stated that she did not know of any meeting that Gallagher may have called regarding the Respondent's management style. She also stated that she was not aware if Coppola and Gallagher attempted to be transferred off the Respondent's team. She acknowledged that she never heard anything about that.

Sergeant James Curry (Retired)

Curry worked for the Department from January 1986 until February 2006 and retired in the rank of Sergeant. He stated that he worked as an investigator for OEE0 from September 2003 until his retirement in February 2006. When he arrived in OEE0 he was assigned to Lieutenant Screen's group and then in October or November of 2003 he was reassigned to the Respondent's group.

Curry testified that Coppola was also a Sergeant assigned to OEE0 and he worked on the opposite team that Coppola did. He stated that at one point, while working on Screen's team, he and Coppola switched and Coppola went to Screen's team and he went to the Respondent's team.

Curry stated that Gallagher was also an investigator in OEEO and he was assigned to the same team, under the same supervision of the Respondent. He stated that Hoffer was also assigned to OEEO and his position was in the analysis and mediation section. He stated that Mark Henig was the executive officer at the time that he was there. During the time he was there at OEEO Curry stated that Coppola and Gallagher interacted with each other in that "they would talk, and it was a small room that we worked in, and we all had cubbies so they were all pretty close together, and I got to know everyone, and I noticed that Sean [Gallagher] and Dominic [Coppola] would interact and talk." He added that Coppola and Gallagher also went out to lunch together on a frequent basis. He also saw Henig go out to lunch with Coppola and Gallagher on several occasions. He also saw Hoffer with Coppola interacting socially and professionally. Curry acknowledged that he saw Coppola, Gallagher and Henig in a group together and stated that "I occasionally joined the gentlemen for lunch." (T.692)

When Curry was asked if he ever heard Coppola complaining about his working conditions he stated "Well, as I got to know Coppola, because I was newly assigned to the command, and then after 6 weeks I was moved from one team to the other team, and this was done because Coppola and Lieutenant Crowe were not getting along so they wanted to separate the two men. Since I was newly assigned, they moved me to Lieutenant Crowe's team and moved Coppola to the other team under Lieutenant Screen. Coppola came to me and said, 'I apologize, Jimmy but -- I am sorry that you had to be moved. We are not getting along so we are doing a swap.'" (T.692-693) He added that Coppola never was specific as to what was bothering him about the Respondent. Rather he generalized and told him, "you know, I say tomato he says tomato. We just don't mix.

We are like oil and water. I don't want to get into the specifics of it," and Curry did not question him for an explanation. (T.693)

With regard to Gallagher making complaints Curry stated that "...Gallagher had expressed disappointment that he was not assigned to the job task that he was interviewed for, mediation and statistical analysis unit." He stated that Gallagher was supposed to get that position, but instead was made an investigator.

Curry stated that he attended a meeting with regards to the Respondent's supervisory style. He explained that "I believe the meeting took place in April or May of 2004, and this was a meeting with the team, and Lieutenant Crowe was not at the meeting....the meeting was organized by Sergeant St. James, Scarlet St. James, and we were discussing Lieutenant Crowe's style of management, and it kind of became a venting. People on the team were not happy with his style....The consensus was that Lieutenant Crowe got us bogged down on minutiae and frequent rewrite that people were not happy doing. For one, he would like to circle with a red pen, kind of like in grade school, people's grammatical errors on paper or spelling errors, and some people didn't like it." (T.694) Curry further stated that when his team was "catching," which is the team taking in complaints, "people expressed their dissatisfaction that when we were catching, if you were the investigator of the day, you would frequently have to work many hours into the evening because of Lieutenant Crowe's style of rewrite and punctuation so people were not happy with that. He was like a nit-picker, and a little bit obsessive with this to a fault." (T.695)

Curry stated that those present at the meeting he previously referred to were Sergeant St. James, Detective Debbie Williams, Sergeant Gallagher, and a few other

people on the team that he did not recall. He recalled that "Sergeant Gallagher felt that Lieutenant Crowe's style was incompetent, and he really shouldn't have been in the position as team leader." (T695) Curry stated that a result of the meeting was that "it was decided that first this had to be brought to Lieutenant Crowe's attention and then if no satisfaction was obtained or improvement, then it would then have to go to Captain Henig, up the chain of command to resolve this." Curry stated that he was not sure whether it went up the chain of command, but Gallagher told him that he spoke to Henig who was "powerless to do anything." (T.696)

Curry stated that he met with the Respondent on many occasions inside his office when he worked on his team. He stated that the door was always open but sometimes the door would be closed if they were discussing sensitive material. He stated that since he dealt with sensitive matters he would close the door to the Respondent's office because it was very close to the coffee station outside of the office and when people lingered there they can hear the conversation. Curry added that he met with the Respondent in his office from the time he arrived at OEE0 until the time that he left. When Curry was asked if the Respondent stared at his crotch when he was in his office he stated "No," and when he was further asked if he ever told Gallagher that the Respondent stared at his crotch he also said "No." When he was further asked if anyone in his presence ever made a joke about the Respondent placing his hands in his pockets he stated "I believe that Sergeant Larry Hoffer said that Lieutenant Crowe always had his hands in his pockets sometime and it was like a joke." He responded to this by saying "Well, I laughed. I remember saying to Sergeant Hoffer, 'Well, maybe I should be like the fella in the movie

9 to 5...[Dabney] Coleman. Maybe I should hike my pants up and walk in there if I want to get a day off there.” (T.698)

Curry stated that he never saw the Respondent do anything inappropriately with his mouth or his hands while he worked for the team and added that “Lieutenant Crowe always was a gentleman to a fault.” (T.698) Curry stated that it was Chief Kennedy that called the Respondent Jimmy Neutron after the cartoon character and stated he did not see the humor in that because he had not seen the cartoon.¹⁸ Curry stated that he observed that the Respondent was always moving around fast, was a fast worker when he walked around. This caused him to understand why Chief Kennedy gave him that name.

Curry testified that during the time he worked at OEE0 he found that “Lt. Crowe had a reputation of being very precise and very honest almost to a point where it could become annoying. He was a little bit obsessive, and he would like to check things over and over again to make sure that we were right in what we were saying or putting down on paper. This, frankly, irritated a lot of people. Sometimes it bothered me. He would say ‘yes, double check it again. Make sure we got it right. This has to go upstairs.’ You know, it could get on your nerves after a while.” (T.701) Curry also noted that the Respondent was the most respectful person he ever worked with in this job “not only for me myself, seeing how I was doing, but also for the work that we were doing.” (T. 701)

On cross-examination Curry stated that he worked for the Respondent from September 2003 to June 2004, a period of approximately 9 months. Curry again referred to the Respondent’s management style and stated that “he got bogged down in minutia. That was my concern, that he would get bogged down on petty details and slow the

¹⁸ It was explained to the court that Jimmy Neutron is a cartoon character for young children where by it is a young boy who is a scientific wiz who could solve any problem, and he always spins around and is moving very fast.

process up a little bit.” (T. 704-705) When asked if other people at the meeting expressed similar reservations about the Respondent, Curry replied “Yes. One person didn’t like the circling of the papers with the red pens, the grammatical errors and spelling errors; sentence structure; felt like it was like grade school.” (T.705)

Curry stated that he did not remember anyone bringing up the subject of the Respondent staring at people’s crotches and he did not remember anyone raising allegations of sexual harassment against the Respondent. He further stated that Gallagher was at the meeting and Curry did not recall if he raised any of the issues regarding the Respondent staring at crotches or sexual harassment. On re-direct examination, Curry stated that it has been more than three years since the office meeting concerning the Respondent and he acknowledged that he could not “remember everything” that was said at the meeting.

Deputy Chief Steven Kennedy

Kennedy testified that he is currently the Commanding Officer of Detective Borough Bronx. Prior to this command he was the Commanding Officer of OEE0. He stated that he was assigned to OEE0 in June of 1998 and left in September of 2003. Kennedy testified that he knew Gallagher as a Sergeant assigned as an OEE0 investigator while he was at the command. He also knew Hoffer who was also assigned as an investigator and Mark Henig who was a Lieutenant Supervisor in investigations and then returned as a Captain and as Kennedy’s Executive Officer.

Kennedy stated that the Respondent was a Lieutenant Supervisor in OEE0 and that he met the Respondent prior to being assigned to OEE0 when the Respondent was a

Detective from the Housing Police. He added that they both worked together and he “began to learn about Lieutenant Crowe’s integrity and reputation....I was then the CO of the Department Advocate’s Office, and upon merge, both transit and housing disciplinary units were merged into the Advocate, and that is when I met Kieran. Kieran was always very respectful, courteous, professional, pleasant, you know, from the first time I ever encountered him.” (T.719-720)

On cross-examination Kennedy testified that he characterized the Respondent’s management style as “efficient and studious.” He added that “My experience with him in the special prosecutor’s unit in doing his assignments there, I personally recruited Lieutenant Crowe because I knew his disciplinary background, I knew he had been a Sergeant in the Chief of Detective Investigations Unit so I knew he had the required background,... You know I knew how he worked.” (T.721) Kennedy stated that he was not aware of any specific complaints regarding the Respondent’s management style. Nor was he aware of any meeting that was called in OEE0 concerning the Respondent’s management style.

Detective Debra Williams

Williams testified that she is currently on terminal leave (retirement leave) from OEE0. She stated that she was assigned to OEE0 in July 2002 until her terminal leave in 2007. She stated that during her time at OEE0 she was an investigator assigned to one of the two teams in the command. She stated that she was assigned to OEE0 when the Respondent was assigned to the command and she was assigned to his team and remained on his team until he left the command.

Williams stated that Gallagher was an investigator in the unit. She stated that she attended a team meeting in June 2004. She recalled that Gallagher and St. James initiated the meeting and "they came around and told the members of the team that they wanted to have a meeting; 'put it on your calendar,' told us a date and time." (T.725) The meeting took place in an office on the 6th floor and those present were Gallagher, St. James, Detective Grier, Sergeant Curry and herself. She stated that the Respondent was not invited to that meeting and when the meeting began they spoke about office issues. "I mean they were issues concerning tours, days off, at that point they said Lieutenant Crowe's behavior -- he was doing things to Sergeant Gallagher." (T.726) She stated that Gallagher told the members "I don't remember the exact words, but it was -- initially he was kind of sugarcoating it like fixing himself or adjusting himself, and then he said he was touching himself in a sexual manner." (T. 726)

Williams stated that the reaction of the people at the meeting to these allegations "was all around shock. I mean, I was semi-outraged, because I didn't want to have the meeting. I was never comfortable with close door meetings, whether it was a closed door meeting with myself and Lieutenant Crowe or a closed door meeting with them. I felt as though it should all be out in the open. Now you bring me in this closed door meeting and you make this assertion. I was pretty outraged over that, because for some reason you are putting me on notice as an EEO investigator, and we are all EEO investigator so how dare you." (T.727)

Williams stated that Gallagher and St. James had asked Curry at the meeting to "co-sign that he too was experiencing this behavior of a sexual nature" from the Respondent. Williams stated that co-sign was her word and added that what they said to

him was “‘Jim, you know what we mean right?’ and he was like, ‘no, absolutely not. I don’t know what you mean.’” (T.728)

Williams stated that as a result of this meeting she “suggested well, maybe we need to take this up a notch, go to the Inspector, or the very least the Captain, or even -- I remember saying or even the Commissioner. You know, like we need to take this up a notch. This is not the forum to do this.” (T.728) When asked what she meant by “this” she was referring to “them making an allegation, an allegation of sexual harassment on him.” (T.729) Williams stated that sometime after the meeting she asked St. James and Gallagher if they spoke to the Inspector or the Captain regarding the allegations against the Respondent and they told her “‘No, no. We are going to wait and see. We are going to wait and see.’ It was no longer important. As adamant as they were they became very complacent.” (T.729)

Williams stated that during the time she worked at the command she saw Gallagher go into the Respondent’s office on a routine basis. She did not recall whether it was every day, but by routinely she meant it was a common occurrence. She stated that even after the meeting Gallagher continued to go into his office. Williams stated that she also went into the Respondent’s office and she did not see the Respondent do anything that was inappropriate.

On cross-examination, Williams testified that at the meeting there was a discussion of the Respondent’s “management style, I think that was, again, prompting, or what they said was prompting the need for this meeting, because even prior to going into the meeting, I was like ‘why are we having a meeting?’” (T.731) Regarding the Respondent’s management style Williams stated “they didn’t like it. You know, in my

position -- let me just say, at the start of this meeting I said 'let the record show that I am not comfortable being here. We are having a closed door meeting, and the person we are having these issues with is not here. He needs to be here. As far as his management style, we have all had bad bosses. You know, how many years on the job, you are going to continue to have a bad boss, here or some place else.' You know, they were not pleased with him as a boss." (T.732) Williams testified that there were times when she was not pleased with his management style "because sometimes Lieutenant Crowe did not want to make a decision, and that's problematic in EEO." She added that "I like a very assertive supervisor, and sometimes that was not his management style and I said as much to him." (T.732-733)

Williams explained that when the issue of sexual harassment was raised at the meeting it was sugarcoated, "sugarcoated being -- well, you know sometimes he does things that -- and these are my words. I am paraphrasing, because I don't remember the exact way, but he did not, Gallagher did not come out and say exactly what his issue was. As I testified before, you know, my position was 'What are you talking about? I can't read in between the lines here Sean, Sean what are you talking about? Say what you mean. You are not going to offend me. You are not going to hurt my feelings. I got too much on this job time wise. What are you saying?'" (T.733)

When asked if she thought that the Respondent was a manipulator she said at times because "he wanted all of us to be happy. He was a pleaser so when I use the word manipulative I mean he wanted all of us to be happy. He didn't want anybody to be upset with him. That included his team, his superiors, and he would sometimes say things so

that we wouldn't be upset, in an effort to be a pleaser, so that we could all get along."
(T.738)

Chief Raymond King (retired)

King is retired from the Department and is currently a private investigator and also works as an expert witness. His last assignment in the Department was in IAB where he worked until he retired in 2004. He stated that he has known the Respondent since the late 1980's when King was a Lieutenant in the Housing Police Internal Affairs and the Respondent was a delegate representing members of the service.

King has known the Respondent for approximately 20 years and stated that "as I moved through the Department he moved through the Department, and I have followed his career and kept tabs on him to see how he was doing. There were times when I actually had a lot of interaction with him because of my position and because of his position." (T.742)

King was asked if he knew of the Respondent's reputation for integrity and he stated "everyone I had ever spoken to, and that would include his supervisors and co-workers always held him in high regard and his integrity was second to none." (T.743) King added "that out of all the people I have ever come across on the job, he would be the person I would most like working for me, because he actually was a person that cared about, you know, what happened in the Department, he cared about people, he cared about getting the job done, he cared about making sure that if something was sent over to my office that I got, that it was the right thing, he was very conscientious, and he would

be the type of person I would like as the company president, I would like all my employees to be just like him.” (T.743-744)

On cross-examination King testified that from the time he knew the Respondent the two of them were never assigned to the same command. King stated that he never worked with the Respondent in OEEO and other than going to OEEO on numerous occasions when the Respondent was employed there he never spent an excessive amount of time in that office.

Detective Sanilda Wallace

Wallace is a seventeen-year member of the service and was assigned to OEEO from July 1998 until September 2003. At one point, Wallace and Coppola were assigned to the same team under the Respondent’s supervision. Wallace testified that during the many conversations she had with Coppola he would complain about work issues. “When complainants would call in, he would complain about, you know, how they gave the complaint, the way in which they gave the complaint. He complained about, you know, the hours that we worked, having to be the big eye...the head investigator for the day. You would have to stay from 10, and you would have to stay until the office closed at 6. He complained about that...I remember him complaining about some title that he had purchased for his house. He complained to me about how the title was going to be put down.” (T.748) Wallace also stated that he complained about the Respondent’s supervisory style. She stated that Coppola would complain openly in the office and also came to her cubicle and stand at the entrance of the cubicle and complained openly about the Respondent’s management style.

Wallace stated that with regards to the Respondent "to me he was very honest, and in my opinion, the other detectives and other members of my team felt like he was honest. I would guess to little bit of a fault, because he always wanted everyone to get along." (T.750-751) She also stated that he was very polite and at times he would call her "ma'am" and that he was always polite to complainant's when they came into the office.

Sergeant Nicola Cantatore (retired)

Cantatore was a member of the Department for twenty years from 1984 to 2004. He met the Respondent in May of 1995 and worked for him for approximately 5 years until the year 2000. He stated that he worked with the Respondent in the Department's special prosecutor's office where they handled high profile disciplinary cases within the Department. Cantatore described the Respondent as "he was unwavering. Kieran was a gentleman no matter what he did, how he spoke with people. There wasn't anything that he ever did that I might have thought was inappropriate." (T.754)

On cross-examination Cantatore stated that he never worked with the Respondent when the Respondent was in OEE0.

Captain John Benevento (retired)

Benevento was a member of the Department from 1979 to 2000 and his last assignment was the Commanding Officer of the Chief of Detectives Investigations Unit. Benevento stated that he met the Respondent in 1998 and after interviewing him he picked him to work with him as a sergeant at his command. He stated that when he retired in the year 2000 the Respondent was still in the office as a Sergeant Investigator.

Benevento stated that during the time he knew the Respondent his reputation in the community "was a man of integrity. He had a good reputation in the office as being a person of integrity." (T.758) Benevento added that "from what I could best determine, Kieran respected the rights of others. There was never any incidents or any problems." (T.758) On cross-examination Benevento stated that he never worked in OEE0 and that he never observed the Respondent at that command.

Detective Janice Grier

Grier testified that she has been assigned to OEE0 for approximately 4 years as a Detective Investigator. She stated that beginning in 2003 she was on the team that the Respondent was supervising. Also on the team were Detective Williams, Sergeant St. James, Sergeant Curry, and Sergeant Gallagher along with Sergeant Hollingsworth. In 2004 there was a meeting called either by Gallagher or St. James and the purpose of the meeting was to talk about team moral and the direction of the team. She stated that St. James, Gallagher, Curry, Williams and herself attended the meeting. The Respondent was not invited. During the meeting people were complaining about the Respondent and his management style and at the end of the meeting "they alluded to some things, but they weren't very clear concerning Lieutenant Crowe." (T.762) She explained that the people she was referring to was Gallagher and St. James "and the things that he was looking at them inappropriately, I believe." (T.762) When asked if they explained what they meant by looking at them inappropriately she stated "I believe Sergeant Gallagher did, but I don't remember verbatim or exactly what he said." (T.763) When asked if she remembers the area of the body that was involved she stated the crotch area. When Curry

was asked by St. James if he knew what they meant referring to their vague allegations against the Respondent, Curry stated "absolutely not, I can't say anything to that effect." (T.763)

Grier stated that while she worked at OEEO she never saw the Respondent behaving inappropriately in any way. As a result of the meeting she and Williams decided that if they were trying to make allegations against the Respondent "they should probably speak to the commanding officer, and if they feel that if there is a problem with the team, we should all speak as a team, meaning Sergeant Hollingsworth should be present and so should Lieutenant Crowe." (T.764)

Grier stated that during the time she worked for OEEO she met with the Respondent in his office a couple of times a week or even on a daily basis. She often saw Gallagher in the Respondent's office, but that she did not know whether the meetings were initiated by the Respondent or Gallagher. She stated that while she worked at the command the Respondent's reputation for integrity was "very strong reputation, very good reputation" and that his reputation for respecting the rights of people "was very strong as well." (T.765)

On cross-examination Grier stated that while she did not remember verbatim what was discussed regarding the Respondent's leadership style she stated "I guess basically it just had to do with him not taking a stand on certain things, or just his overall approach towards managing us." She added that "I was new at the time when I worked for Lieutenant Crowe, and at times I felt like he tried to serve everyone, and because of that, nothing ever really got done. Like if there was a disagreement, he tried to make everyone happy, and, in turn no one was satisfied ultimately." (T.767)

Lieutenant Richard Mulvaney (retired)

Mulvaney retired as a Lieutenant from the Department on February 5, 2004.

Mulvaney stated that he knows the Respondent both professionally and personally and met him when they both worked at the Department's special prosecutor's office where they worked together for approximately two and a half years. They have often spoke on the phone and met socially, but the Respondent had not been to his house.

Mulvaney stated that while he and the Respondent worked together at the same command he found that the Respondent had "the utmost integrity, I found him to be one of the most efficient coordinated investigators that I have ever met to this day, and I have dealt with literally hundreds of investigators. I found him to be above reproach as far as integrity was concerned...he was able to get and develop relationships with people as part of his investigations on very complex and sensitive cases...." (T.771) He added that the Respondent "was technically above reproach as far as finishing his documents and investigations." (T.772) On cross-examination Mulvaney stated that he did not work with the Respondent in OEE0 and did not observe his individual work or how he performed his work there.

Probationary Police Officer Mario Cedillo

Cedillo began working in OEE0 as a Cadet in September 2003 as a T/S operator,¹⁹ where it was his job to take calls from complainants that came into the office. He stated that he sat at the front desk which was right next to the Lieutenant's offices and to a couple of the cubicles that were there. Cedillo stated that while he was there he came to know Coppola, Gallagher, and the Respondent. He recalled that Gallagher stated that

¹⁹ A T/S operator stands for Telephone Switchboard operator.

the Respondent "was a nice guy." (T.808) He stated that Gallagher did not say anything about the Respondent's sexual orientation; rather he overheard from office conversation that the Respondent was gay. He also said that Coppola told him that the Respondent was "a good guy." (T.809) Cedillo stated that during his time at OEE0 he never saw the Respondent say or do anything that he found offensive or inappropriate. He stated that he was "a good guy," and a good supervisor and would help him with his work. He also stated that the Respondent would at times come out of his office and ask him how everything was and if everything was okay and then he would go back into his office.

On cross-examination, Cedillo stated that the Respondent would give him pointers on what to expect from the Department and what to do and what not to do within a command. The Respondent also told him with regard to ranking officers "you have to respect -- this job is about rankings and you have to respect them." He also told Cedillo that "it is who you know, and you have to play the game. You have to respect your supervisors and what not." Cedillo stated that he never used the term "kiss ass." (T.811)

Lieutenant Kieran Crowe

The Respondent is a 23-year member of the Department currently assigned to the Support Services Bureau. Prior to working at Support Services Bureau he worked at several different commands and ultimately was assigned to OEE0 on October 11, 2001. He stated that he was a supervisor of one of the two investigative teams where he supervised anywhere from 4 to 6 investigators.

The Respondent viewed RX G in evidence and stated that his office as depicted in the exhibit is correctly positioned. He then viewed RX H in evidence and testified that

the exhibit was the OEEO office on the 12th floor and depicts the view from the entrance going towards Deputy Commissioner Ziegler's office. He stated that the diagram, in essence, depicts the OEEO office as it appeared when he worked there and drew an arrow on the far wall depicting the direction to Deputy Commissioner's Ziegler's office. He also drew an arrow and marked it "LTC" indicating the direction to his office.

The Respondent viewed RX I in evidence and stated that it is a picture of the office depicting the cubicles and the right side of the office. He noted where the door of the Deputy Commissioner's office is and made a notation on the exhibit to that effect. He stated that the photograph looked substantially the same as it did when he worked there.

The Respondent viewed RX J in evidence and stated that it was the hallway that leads to his office and also to Lieutenant Screen's office. The Respondent wrote the name of Lieutenant Screen on the doorway to her office and also wrote his name on the exhibit with an arrow pointing to his office. After indicating where his office was, the Respondent stated "then to the left is a snack area with a microwave, toaster oven, and coffee. This is the refrigerator for the office, and that is my doorway there." (T.827) He added that the depiction of the office was substantially the same as when he worked there and added that "the only thing missing is there was a water fountain..." (T.828) He also pointed out and marked the area where PAA Boone had her work station where she worked on the payroll while he was in OEEO. He also testified that in front of the office where he marked for PAA Boone, there also was a printer and a fax machine.

The Respondent then reviewed RX K in evidence and stated that that exhibit shows that "as you enter into the Office of Equal Employment Opportunity, these are the investigators cubicles that would be on the right hand side, and also the entrance to Chief

Kennedy's Office -- well, the commanding officer's office." (T.830) He also pointed to the executive officer's office and the ICO's office and made a notation for each one of the officers that he identified. He stated that the exhibit of the office shows that the office is substantially the same as it was when he worked there.

The Respondent then viewed RX L in evidence and stated that this exhibit is a "view of the Office of Equal Employment Opportunity on the 12th floor of One Police Plaza, and from the vicinity of the stenographer Austin's desk which is right here and this would be Sergeant Coppola's cubicle." (T.831) The Respondent then marked on the exhibit where Coppola's and Austin's cubicles were located. He explained that Steno Austin was an assistant to the Deputy Commissioner.

The Respondent described the amount of pedestrian traffic directly outside his office as people going through there constantly "to eat, get their snacks, their lunch, to cook, make coffee. That is where the coffee was. The water fountain was by me too, and people would get water all through the day -- not water fountain. It was like a water cooler." (T.832-833) He stated that when members of his team came in to have conversations with him the door could either be open or closed; if it was very loud outside his office the door might be closed.

The Respondent testified that Coppola was a member of his team when the Respondent arrived in October 2001 until November 2003. He stated that he spoke with Coppola on a daily basis and these conversations took place either inside or outside of his office. The nature of his interaction with Coppola pertained to business, personal matters or "just chit chat." (T.834) He stated that Coppola was very relaxed in how he behaved towards him, even calling him "Jimmy Neutron" which the Respondent claimed was a

nickname that Coppola "invented" for him. The name "caught on in the office for me, and he would say 'dude' which I had never been called dude before." (T.835) The Respondent stated that he found out that Jimmy Neutron was a cartoon character on a children's television channel.

The Respondent stated that during the time he was at OEEO Coppola argued with him on a regular basis. He explained that the arguments were "usually about his cases. Captain Cassidy, who was the XO at the time, would read his cases -- and he was verbose in his writing so a lot of times Captain Cassidy would want to cut back. Any changes you made to his work product was -- I remember he would say 'It is losing the flavor when you are changing it.' He was sensitive to the changes. He was sensitive to changes in his writing." (T.836-837)

The Respondent acknowledged that he rated Coppola's performance on a Department Annual Evaluation Form while Coppola worked for him. He stated that he rated him a 4 which means "highly competent." When asked if Coppola was in fact highly competent the Respondent replied "I would say he was competent, but not highly competent." (T.837) When asked if he was not highly competent why did he rate him as such and he explained "because if he had been less than that, he would probably leave the office, and the office was -- it was very difficult getting manpower for the Office of Equal Employment Opportunity. We were never on a list where we could pull people like Internal Affairs or Detective Bureau or OCCB." (T.837) The Respondent further explained that by Coppola leaving the office he meant "there is a potential of him being reassigned. Captain Cassidy once said if somebody didn't have a specific rating, then

they would probably be less than desirable to be there, but also my personality is I really don't want enemies so I tend to be a higher rater." (T.838)

The Respondent stated that Coppola also complained to him about overtime. "He wanted overtime, which happened after his wife lost her job, and I remember he came to me, and I said -- he wanted overtime only in here, One Police Plaza or around, because I said there was detail overtime available outside, but that would have been Saturday and Sunday, and he wasn't interested." (T.838)

The Respondent testified that he supervised Gallagher from April 2003 until the Respondent left OEE0 in February 2005. He stated that the manner in which Gallagher behaved towards him was "argumentative, relaxed at times, would joke at times, but argumentative over -- sensitive about his work. He would argue time off he is big on, but if you corrected his work, he would be upset. He was often -- it was almost as if he was offended if you corrected his work at times." (T.839)

The Respondent testified that he rated Gallagher's performance on a Department Annual Evaluation Form (DX 3) a 4.0 or "highly competent." When asked if Gallagher was actually highly competent the Respondent replied "No, ma'am, he was not." When asked why he rated him highly competent he stated "again, I needed a body to write. He had been experienced like Sergeant Coppola, he had experience, and I definitely -- don't like to make enemies." (T.840) The Respondent stated that there came a time in January 2004 where he told Gallagher that his performance was not "up to par." (T.840) He stated that there was an office-wide meeting based on Gallagher's performance and the Deputy Commissioner had asked for one of his cases and "there was no worksheets. There was nothing done. It involved a call-out and a captain in Queens and there was

nothing done. I was yelled at by Commissioner Zeigler, and she directed me to make sure that people are performing more on the team, and I lectured him on his time management and getting his cases done. He apologized and said he was burnt out over the holidays. It was shortly after the holidays. He had taken the holidays off." (T.841)

The Respondent further testified that Gallagher always went into his office voluntarily. He stated that "he was never bothered to come into my office." He stated that he came in regularly and "he could come in there in three or four times a day. If he was working on a case in that time period between January and June of 2004, his cases had fallen behind, and I was directed by Captain Henig to give him special attention to keep his cases current." (T.841-842)

The Respondent stated that after May 2004, Gallagher's frequency of coming in his office did not change. According to the Respondent, after June 2004, Gallagher was the same person as he was before. He explained that in June 2004 when Gallagher came to his office "he would have a file, just a basic file with case folders. He would come in, and he would be at my door [holding his cases] at chest level, and then he would bring it down like this to his crotch and he would smile at me."²⁰ He acknowledged that Gallagher held the cases below his waist.

When asked how often Coppola visited his office he stated that it was "regularly." (T.841) He also stated that when Coppola left his team "it changed, but it's still -- he would come in. He asked me a couple of things. In April or March of 2004, I remember him asking me for a catering hall for the [REDACTED], anticipating [REDACTED]

²⁰ During this part of the Respondent's testimony he stood up and demonstrated how Gallagher lowered his cases to his crotch area.

██████." (T.843) He added that Coppola would talk to him in the hallway or "anywhere" and he would always say hello to him.

The Respondent stated that during the time that Coppola and Gallagher were in his command he observed the two of them interact on a regular basis every day and they also went to lunch together. He stated that they appeared "very socially friendly."

(T.843) He added that they would laugh together and "you would see they were having

fun." (T.844) He also saw Gallagher interacting with Henig. He described them as

friendly and Gallagher would go into Henig's office and "a lot of times when I came in in the morning, that is where Sergeant Gallagher would be, in his office just talking."

(T.844) The Respondent acknowledged that Coppola, Gallagher and Henig interacted with each other. He explained "well, I would often see them both in his -- in Captain Henig's office, and I would see them go out for lunch too." (T.845)

The Respondent stated that Hoffer was never a member of his team. He saw Hoffer interact with Gallagher and they would laugh and joke together. He also saw Hoffer interact with Coppola and they also would laugh and joke together. He also saw Hoffer in Henig's office on many occasions and they would go out to lunch together.

When the Respondent was asked if either Coppola or Gallagher ever complained to him about offending them in any way besides correcting their work the Respondent replied "never, never." (T.845) The Respondent also indicated that Gallagher did not have the authority to call meetings of the detectives and sergeants on his team.

When the Respondent was asked if he ever used his tongue in any expressive way in the presence of other people in the command he replied "Yes. I have stuck my tongue out at the phone. I have stuck my tongue out at the phone if I was on the phone for

frustration or something like that.” (T.846) When asked if he ever wiggled his tongue and moved his hands in a way that was intended to simulate licking a man’s testicles he replied “no.” (T.847) The Respondent was then asked if he had ever made a stroking motion with his hand, he replied “Yes, ma’am.” [Indicating on the phone.]

[It was then described for the Court, by Respondent’s counsel as the Respondent made a demonstration, that the Respondent while making a whistling motion moved his fist at about the level of his shoulder in an outward and up and down motion about three inches away from his body.]

When the Respondent was asked what this gesture could mean he stated “it could mean two things. One, I might be getting jerked around on the phone, or that I was going to stroke someone. Stroke someone. It is from the Police Academy when I went through the Police Academy. Part of the curriculum is actually stroking people. Stroking people is even if you are going to give them negative information, try to make them feel better about it so they don’t have a bad day. That would be complaints, anyway.” (T.847-848) He further explained that “The film they used in the Police Academy when I went through was a burglary, and the people had been disturbed or their house had been robbed. The idea was rather than going in, purely taking a report and leaving, you would stroke them, just say something nice about the house or something to make the complainants feel better.” (T.848) He stated that he saw other people use that hand motion at the Police Academy mainly “a retired Inspector. He was an instructor in my law class. Also an instructor in my police science.” (T.848) He added that he saw other people use that motion “regularly through my career.” (T.848) He explained that he saw those people when he was in PSA 6 “there was a Detective Steve Johnson, and when he

would go to a domestic dispute, that was his symbol for saying everything is peaceful now; he straightened out the situation, and it is no longer hostile, and he made everyone feel good.” (T.849) When asked if he recalled when and where he used this hand motion that he demonstrated in court he stated “no. I don’t have an independent recollection of exact dates or times, but usually I know I would do it on the phone.” (T.849)

The Respondent was then asked if he ever kissed his own hand and he replied “yes.” He explained that “it is a joke, self-deprecating humor because people would call me a brown nose in the Office of Equal Employment Opportunity, and actually through out my career, I have been called a brown nose and I have been called an ass kisser. I once received a reward [award] -- it was a joke -- I received a reward [award] in Chief of Detectives Investigation Unit for being the best ass kisser in the world or NYPD.” (T.849-850) He stated that the award was a certificate that was made up by the Chief of Detectives Investigations that “Said Kieran Crowe...best ass kisser in the NYPD.” (T.850)

The Respondent denied that he ever placed his hand on his crotch and then pumped it up and down several feet to demonstrate some kind of masturbatory act. When asked if he ever put his right hand any where near his crotch when he was at the command he stated “it is possible, because of medical conditions, but never, ever in the way that these complainants have said; never, and not with that intent that they have said either, never.” (T.850) When asked what did he actually do he stated “I scratched. I had several medical conditions. I had a lot of -- I used to be an avid runner. I would run four, five times a week. In that area I get a lot of fungus. I go to the doctor only as a last resort. I always try to take care of something with over-the-counter medication first.

Sometimes it works, sometimes it doesn't. I am not a fan of going to the doctor. If I was at the doctor's, like when I would go to Dr. Landau, that means it was out of control; I just couldn't control it any more." (T.851) The Respondent stated that he had no independent or specific recollection of his scratching, he stated "it would be unconscious." (T.851) He also indicated that he could not remember how many times he could have done this.

The Respondent was asked if he ever touched his genitals for the purpose of gratifying himself sexually while he was in the presence of other members of service and he replied "never." When asked if he ever made sexual advances towards Coppola he replied "never." When asked if he ever made sexual advances towards Gallagher he replied "absolutely not. Never." When asked if he ever stared at any other man's crotch while he worked at the command he replied "never." When asked if he ever used a scissor like motion of his fingers to manipulate his testicles he again replied "never." (T.852) He also denied ever asking Coppola out on a date or suggesting that they get together outside the office.

When the Respondent was asked if he ever touched Coppola for any purposes he replied "it is possible I could have touched him on his back, up here to get his attention, but never, never for anything bad; never. Only to get his attention, because if he was in his cubicle and he would have his head phones on, and that was my last -- I would have knocked or done something to try to get his attention first. I know that. Touch would have been a last resort." (T.853) He stated that Coppola never complained to him about his conduct "any type of my conduct; nothing. Touch, nothing. Never complained about

it. He once complained to me, --- that I didn't compliment him enough. That was his big complaint to me." (T.853)

The Respondent denied that he deliberately held up overtime pay for Gallagher or Coppola in retaliation for rejecting his sexual advances. He added that the sergeants were the ones who made the work schedules, once a month, in the command.

The Respondent stated that he learned that Coppola was asking for a transfer from his team from Inspector Wheeler. He stated this occurred in 2004, and "I believe it was Inspector Wheeler, who was the Commanding Officer at the time, came to me and said, 'Are you aware of this?' I said, no. No one had spoken to me prior to this." (T.854)

When the Respondent was asked if he knew why anyone would make the kind of complaints that were made against him in this case he stated "certainly. Racism, homophobia and avarice." (T.856)

On cross-examination the Respondent reiterated that he gave Gallagher an overall performance evaluation of 4.0 out of a possible 5.0. The Respondent acknowledged that the rating he gave Gallagher represented a value of "highly competent." (DX 3) In the Performance Areas and Behavioral Dimensions on Gallagher's evaluation, the Respondent evaluated him with the following ratings: Training 4.0; Evaluating personal 4.0; Searches, Investigations, Notification, 4.0. For Behavioral Dimensions he rated Gallagher a 4.0 and for Ethics and Integrity he rated Gallagher a 5.0. The Respondent also made certain comments on Gallagher's evaluation that included the following:

"Sergeant Gallagher maintains the high standards of integrity necessary to be an OEEO investigator, [and] Sergeant Gallagher demonstrates an excellent ability to carry out

responsibilities to a successful conclusion.” (DX 3) (T.859) The Respondent acknowledged that he signed Gallagher’s evaluations on January 16, 2004.

The Respondent acknowledged that when he signed off on Gallagher’s evaluation in January 2004 it was the same month that an office-wide meeting was held because Gallagher’s case folders did not contain worksheets. The Respondent admitted that it was his responsibility to ensure that Gallagher was generating worksheets on his cases.

The Respondent testified that the evaluations he gave Gallagher “were not accurate.” (T.861) He acknowledged that the performance evaluation is an official Department document and as a member of the service he is required to be truthful when he filled out Department documents. When asked if he failed to be truthful when he filled out Gallagher’s performance evaluation’s the Respondent replied “I would rather say I was overly generous to Sergeant Gallagher, as I have been overly generous to anyone who worked for me.” (T.861) The Respondent acknowledged that Gallagher was not really highly competent; rather “he was competent.” (T. 862) He stated Gallagher was competent even though that is not what was reflected on his evaluation. When asked if he put an untruth on the official Department document the Respondent replied “I put my perception of it on that document.” (T. 862) He added that “at the time he told me he had a lot of problems. I didn’t want to hurt anyone. I don’t like to have enemies.” (T.862) When he was asked if performance evaluations are important to the Department the Respondent replied “they should be, sir, but I have never really seen anyone accurately reported.” (T. 863) He added that Gallagher’s evaluation was “incorrect” and when asked “So it is not true?” the Respondent replied “yes sir.” (T.863) When further asked “And you knowingly put down something which wasn’t true on this Department

document?" he replied "I would say knowingly put something inaccurate based on my perceptions because I don't like enemies." (T.863)

The Respondent testified that he completed the performance evaluation for Coppola and signed it on February 3, 2003.²¹ He acknowledged that Coppola at that point worked for him for approximately a year and four months. He further acknowledged that he rated Coppola on performance areas and that he gave him 4s and 5s in those areas. And for police ethics and integrity he gave him a rating of 5.0 in that category. The Respondent also made typewritten statements regarding Coppola, where he stated "Sergeant Coppola maintains a high degree of integrity in maintaining the confidentiality of EEO investigations, [and] Sergeant Coppola is a competent investigator and supervisor. With more experience he will prove to be an asset in OEEO." (T.866)

The Respondent testified that while he gave those evaluations to Coppola which signified highly competent, he now stated that he believed Coppola was just competent. He explained "like a competent investigator. He could do things. It was just his -- it was more of his attitude, his negative attitude towards cases. He complained a lot." (T.866-867) He acknowledged that while this was his opinion of Coppola, he did not mention his true opinion of Coppola in his performance evaluations. He added that a competent rating would have been more accurate." (T.867) When the Respondent was asked that "in fact" it was not true that Coppola was highly competent but that he rated him that anyway the Respondent replied "Yes, sir. If you fell below a 4, highly competent, you would be out of the unit." (T.867) The Respondent acknowledged that when he fills out performance evaluations you should try to be "as accurate as possible." He further

²¹ At this point because the photocopy of the performance evaluation was unclear the court ordered a fresh copy be stapled to the exhibit so that all the print could be clearly legible to the reader.

acknowledged that he was not as accurate as possible in filling out these evaluations because he was "too generous." (T.868)

The Respondent acknowledged that throughout his career he was treated for various dermatologic conditions by a dermatologist, including while he worked for OEEO. The Respondent stated that he went to see Dr. Landau in February 2001 for a condition that caused "discoloration" to his face. He stated that he did not recall having a complaint of [REDACTED] at that time. The next time he saw Dr. Landau was in July 2002 because of a rash that was all over his body. He was prescribed a cream for this condition. He explained "there was a time I would itch all over. I would itch under my arms, I would get something here, I could have [REDACTED] my head, my legs; anywhere." (T.871) He stated that the itch would also include his crotch area. During the July 2002 visit the Respondent acknowledged that he did not complain specifically about jock itch and stated that "the rash is probably all over, if that is what I am thinking. I have gotten rashes on a regular basis." (T. 872) When asked if he specifically reported jock itch to the doctor the Respondent replied "I don't have a recollection. I remember scratching." (T.872)

The Respondent stated that the next time he went to see Dr. Landau was in March 2003. During that visit the doctor treated him for allergies that caused a rash all over his body. He stated that it was not just confined to his genital area rather "it was down there, but also my legs were very itchy because I have very dry skin. Also, I believe it was also on my torso too." (T.875)

The Respondent acknowledged that he began working in OEEO in October 2001 and the first time he told the doctor about a dermatological problem in his groin area was

in March 2003. While he did not complain about [REDACTED] specifically he stated that he had an itch all over his body and was prescribed a cream that he also put in his genital area. When the Respondent was asked if by May 2003 his condition had cleared up he stated that he did not have a specific recollection of it clearing up but that he felt itchy especially if he ran and his crotch area was very bad.

The Respondent did not recall when he stopped using the medication for his crotch area "because I remember I continued with [REDACTED] also, and the [REDACTED] I take on and off now." (T.878) When the Respondent was reminded that during his official Department interview, on June 29, 2004, he had acknowledged that by the end of May he had stopped using the cream "where the rash was breaking out" and that he had told the investigators "to the best of my knowledge, yes." (T.879) When asked if he recalled making that statement to the investigators the Respondent stated "I could have. I don't have a complete recollection of my PG." (T. 879) The Respondent further acknowledged that after May 2, 2003, he had no further appointments with the dermatologist in the calendar year 2003 but added that he had refills on his medications.

The Respondent stated that in June 2004 he again saw the dermatologist for lesions on his back and chest. He stated that he did not recall if at that time he complained about [REDACTED] "because on that day I had -- I was diagnosed with [REDACTED]" (T.880) He believed that the [REDACTED] were on his back.

When the Respondent was asked while he was at work did he feel that he had the need to touch his groin because of his dermatologic conditions he stated, "if I had an itch, I scratched, but never in an inappropriate manner, never." (T.881) And when he was asked if he had an urge to scratch himself what did he do he replied "scratch." (T.881)

He stated, however, that he had “no recollection of doing it in front of other people. He added that he “just an overall recollection of that area being itchy because of various problems, and I have had it since I was a kid.” (T.881)

The Respondent stated that with regard to scratching himself because of his dermatological condition while employed at OEEO he had “no independent recollection of scratching any area down there. No one ever said anything to me about it, and I am sure it was not inappropriate.” (T.882) When asked if he had to scratch himself would he excuse himself from the presence of other people he replied “there would be no need to, because I wouldn’t scratch myself the way these complainants are saying I scratched myself, sir.”(T.882) He added that “I am sure I have scratched myself in the presence of others,” but he could not name anyone in particular who was present when he scratched his genitals. (T.884)

With regard to Gallagher placing case folders over his crotch the Respondent stated that “the recollection, sir, is taking folders from his chest area and in an intentional movement placing them in front of his crotch area before he ever entered after I was interviewed by IAB.” (T.884)

The Respondent acknowledged that during the two-year period that he supervised Coppola, Coppola came into his office on numerous occasions two or three times a day and that Coppola was alone in his office during those occasions as were all members of his team. He also acknowledged that the door was closed when Coppola was in his office. He stated that when Coppola came into his office there were times when he would sit down and there were times when he would stand up. He stated that Coppola would sit “in a chair...to the right of my desk.” (T.886) He added that when Gallagher

sat in his office he would sit in the same chair. The Respondent stated that if he was seated in his chair and if he wheeled his chair out from under his desk it was possible for a person sitting in that area to see his crotch area. (T.887)

The Respondent acknowledged that when he was on the telephone he would sometimes stick his tongue out. When asked if he did this in the presence of people he supervised he stated "I have no independent recollection if anyone was in the room when I did this." (T.887) When asked if he did this in front of Coppola he stated "he might have been there on one occasion. It wasn't a frequent thing." (T.888) He stated that he stuck his tongue out "if I was annoyed or something like that." (T.888) He stated that after he stuck his tongue out in a quick movement he would put it back in his mouth. [The Respondent demonstrated in court how he stuck his tongue out and the court observed that the Respondent stuck his tongue all the way out and brought it back in.]

The Respondent stated that he had no independent recollection of when or on what occasion he would stick his tongue out, he just knew that he had done it. When asked if he had only stuck his tongue out when he was on the phone or whether there were other times he stated "there may have been other times, but generally I would say on the phone." (T.890)

The Respondent acknowledged that he at times made hand motions. He also acknowledged that he made the hand motions indicating jerking someone around while he was "on the phone." He stated that he may have made those motions when other people were in his office. When asked if he had any particular recollections of the occasions when he made those "jerk off motions" he stated "if I was stroking someone. Or if I was getting jerked around on the phone." (T.890-891) He explained that by

getting "jerked around" he meant "if I was getting abused on the other side of the phone by someone, or if I was not getting a clear answer from someone." (T.891) He stated that he did not recall if he made those gestures in front of Gallagher or Coppola or any other investigators. He stated that when he made the hand motions, the motions "could be a couple of seconds more or less." (T.892)

The Respondent acknowledged that at times he would also kiss his hands. He stated that he did this because "it was something I saw from the special prosecutor, and it would just always be -- it was like a joke, and sometimes Chief Kennedy would call me a brown nose, or a lot of people called me brown nose." (T.892) He acknowledged that when he wanted to indicate that he was brown nosing he would kiss his hand. When asked if he ever kissed his hand when referring to himself as an ass kisser he stated "I may have, but I don't have a recollection specifically of that." (T.893)

The Respondent denied telling anyone in OEEO or any of his subordinates that he was the best ass kisser in the Police Department. He further denied that he ever told any of his subordinates that he would teach them to be an ass kisser. When asked when he would kiss his hand if he would ever do it while he was on the telephone in his office in OEEO he stated "it is possible, but I don't have any independent recollection of it." (T.894) He also had no recollection of kissing his hand when Gallagher or Coppola was in his office. He testified that when Coppola transferred out of his team he was told by Inspector Wheeler that the transfer was because of a "personality clash." (T.895)

On re-direct examination the Respondent acknowledged that the high ratings for integrity that he gave Coppola and Gallagher were made before they claimed that he was masturbating and staring at their crotches. He further stated that the specific language he

used in the evaluations came “from a book we get for review. I believe that is standard language.” (T.897) The Respondent also stated that he did not go to Dr. Landau for every skin eruption but only used her as last resort. He further stated that when Dr. Landau gave him a prescription he refilled that prescription over a period of time that was used for his crotch area. On re-cross examination the Respondent acknowledged that while he got the language for his evaluations from a form book, once he typed it on the form he adopted the statement as his own.

FINDINGS AND ANALYSIS

During the dates specified in the charges, the Respondent was a lieutenant in charge of one of the investigative teams in OEEO and for a period during that time Coppola and Gallagher were assigned to his team as investigators. As members of his team they were required to report to him on a regular if not daily basis to discuss the progress and direction of their cases. Hoffer was never a member of the Respondent’s team, but he nevertheless reported to him to discuss his cases when his supervisor was away from the office. The allegations against the Respondent primarily stem from these meetings, which took place inside the Respondent’s office with the door closed.

The Respondent argues, through his counsel, that he is not guilty of the charges against him because Coppola and Gallagher lack credibility and Hoffer’s testimony should be disregarded because he never alleged misconduct on the part of the Respondent. This Court disagrees with the Respondent’s arguments and finds that the evidence presented against him was credible and persuasive.

Specification Nos. 1, 2 & 3

The Respondent is charged with engaging in a continuous course of conduct prejudicial to the good order, efficiency and discipline of the Department. The first specification refers to allegations made by Gallagher and charges in sum and substance that while the Respondent was on duty on or about and between May 1, 2003 and May 11, 2004, he improperly stroked his genital area; improperly made sexual gestures by moving his hand up and down in front of his crotch as if he was masturbating, and improperly made sexual gestures by sticking out his tongue and wiggling it around in a sexually suggestive manner.

The second specification refers to allegations made by Coppola and charges in sum and substance that while the Respondent was on duty on or about and between December 1, 2001 and June 4, 2004 [actually the fall of 2003] on numerous occasions he improperly touched his genitals and rubbed his thigh; he improperly made sexual gestures by moving his hand up and down in front of his crotch while at the same time making sighing sounds as if he was masturbating; he improperly made sexual gestures by sticking out his tongue and wiggling it around in a sexually suggestive manner; and improperly touched various parts of Coppola's person without permission or authority.

The third specification refers to allegations made by Hoffer and charges in sum and substance that while the Respondent was on duty on or about and between April 1, 2002 and June 4, 2004, on numerous occasions he improperly placed his hand in his pocket and touched his genital area, and improperly stared at the crotch of Hoffer.

There are two key questions raised by these charges: whether the Respondent made the gestures as alleged by Coppola, Gallagher and Hoffer and whether those gestures were conduct prejudicial to the Department.

A guide for the Court as to the nature and understanding of the Department's position regarding Patrol Guide section 203-10 is found in Disciplinary Case Nos. 75201/99, 75202/99 & 75203/99, where it was noted that the section "sets forth a prohibition against conduct prejudicial to the good order, efficiency and discipline of the Department and does not enumerate specific acts of misconduct. The provision's purpose is to prohibit conduct that, although not specifically mentioned in the Patrol Guide or in other Department rules and regulations, is clearly wrong and contrary to the training and practices of a reasonable officer."²²

Sergeant Coppola's Testimony²³

Coppola's credibility is supported by the unique detail of his testimony as he recounted and described the various physical gestures made by the Respondent in his presence during the numerous occasions he was in the Respondent's office with the door closed. The incidents started in December 2001, when the Respondent became angry with him and told him to report to his office because he spoke up at a case review meeting with OEEO's Deputy Commissioner and Commanding Officer. Once there, the Respondent proceeded to instruct him that he, the Respondent, was the "number one kiss ass in the Department" and that Coppola will learn to kiss ass just like him. It was at this point that the Respondent stood up and "with his palms facing away from him, ... he

²² The clarification of Patrol Guide section 203-10 was noted in a post-trial Memorandum as part of the final decision made by the Police Commissioner in that case.

²³ The Court, in keeping in line with the trial transcript, will refer to the testimonies of the three complainants in the order in which they testified to wit: Coppola, Gallagher and Hoffer.

pursed his lips as if he was kissing between his palms” and stuck his tongue out and moved it in a circular motion. Coppola described the gesture as the Respondent teaching him, using a “graphic display... how to kiss ass.” The Respondent then told Coppola to “get out of my office.”

Coppola informed the Court that from that point on, from December 2001 until he was transferred from the Respondent’s team in October or November 2003 and stopped working for the Respondent, the Respondent continued making gestures that Coppola viewed as sexual in nature. For example, he described in graphic detail the gesture the Respondent made while holding a manila envelope with his left hand against his chest, and then took his “pointing finger and his index finger, [and] put it into his lap, his crotch....” He noted that the Respondent’s hand “was in his crotch in the middle of his pants, outside his pants, and his two fingers were moving back and forth in his crotch...[touching] his testicles...” for approximately two minutes. Coppola was adamant that the Respondent was not “adjusting himself” because “the two fingers moving up and down” did not indicate that he was trying to make himself comfortable. He also doubted that the Respondent was scratching himself because “an itch you would have moved your fingers if you had an itch. It was up and down.”

Coppola also told the Court that the Respondent made a sexual gesture by making a “fist with his right hand, and his right hand is in the middle of his right thigh. He raised his hand about 12 inches and strokes his hand up and down.” He described in detail how the Respondent “rubbed with his right hand, the palm side of his right hand, he rubbed from his crotch up towards his knee on the inside of his thigh. He is sitting and going from his crotch towards his knee.” The Respondent repeated this gesture approximately

six times and made a sighing sound while doing it. Coppola interpreted this as “a masturbation gesture” and described the sighing as a “low sighing type sound [lasting for a] very short period of time while these strokes of his hand up and down occurred.”

Coppola further described how he attempted to look away at the ceiling only to be told by the Respondent to “pay attention” which prompted Coppola to ask “pay attention to what?”

On another occasion the Respondent, while on the telephone, with Coppola seated in his office, “cradles the phone between his left ear and his left shoulder...and he holds both hands out in front of him. While his hands are like that, there comes a point he sticks his tongue out...Makes a swirling motion with his tongue.” Coppola viewed the gesture as “like someone embracing another person’s head and kissing a person.” On another occasion, Coppola observed the Respondent holding a case folder in his left hand and “kiss[ing] or lick[ing] the back of his right.” And when he did not “pay attention” the Respondent would again tell him to get out of his office.

The Respondent, in addition to making the sexual gestures in Coppola’s presence, also went out of his way to touch Coppola when he went to Coppola’s cubicle. The Respondent, instead of knocking on Coppola’s desk or tapping on his chair to get his attention as other people did, resorted to touching his “triceps,” his “shoulder” and his “biceps” to get his attention. On two or three occasions the Respondent entered his cubicle and “with his right hand, he puts it on [Coppola’s] left thigh and shakes [his] left thigh to get [his] attention.” Even after Coppola told the Respondent “you don’t have to touch me...” the Respondent continued to touch him in the same manner when he entered Coppola’s cubicle.

Coppola also recalled that these incidents happened frequently while he was in the Respondent's office. For example, the touching of his genitals happened often along with "rubbing his hands up and down his thigh or this masturbation [gesture] occurred approximately once a week when he was in his office...." The touching with the two fingers took place approximately once a month during the period that he worked for him. The sticking of his tongue out and moving it around happened approximately two to four times during that period. The gesture that the Respondent made where he licked the back of his right hand happened approximately six times from February 2002 to November 2003, and the Respondent rubbing the inside of his thigh took place once a month during the time that he worked for him.

Sergeant Gallagher's Testimony

Gallagher's credibility is also attributed to the details and uniqueness of his testimony, where he recounted the numerous occasions where the Respondent made sexual gestures in his presence.

The incidents he experienced began, in May 2003, with the Respondent staring at his crotch area. He informed the Court that while the Respondent spoke to him "he would look at me in the face like you would normally have a conversation with someone, and then his eyes would divert towards my crotch area...and a lot of times it would sit there for fifteen, twenty, thirty seconds, and then drop to the paperwork, or come back to look at me in the face again." This incident of staring occurred when Gallagher stood in front of the Respondent's desk while the Respondent was sitting in his chair. Gallagher pointed out that this type of conduct occurred ten to fifteen times a week and it caused Gallagher, at times, to excuse himself from the Respondent's office.

The Respondent's staring at Gallagher's crotch also caused him, in December 2003 or January 2004, to "start to carry things into the office to put in my lap...so he couldn't do that anymore. I just didn't want to have him looking at my genitals anymore." Gallagher would also sit down and cross his legs and wear looser fitting pants "so it wouldn't define my genital area as much." After changing to a different type of pants he thought "that is when it started getting to the point where he would look longer" for periods of thirty to forty five seconds. He pointed out that "it was a definite pause in the way he was looking at me."

Gallagher recounted a number of other incidents involving the Respondent, beginning in October or November of 2003 while the Respondent was on the phone. The Respondent was discussing one of Gallagher's cases with another member of the Department, and Gallagher observed him "reach down and cup his hand in a round fashion by his crotch and move his hand in a jerk-motion up and down six to twelve inches from his genital area in a slow motion several times...it seemed as though it was a masturbation type thing." This type of gesture occurred approximately ten times from the fall of 2003 through March 2004.

Also in October 2003, when Gallagher and the Respondent were talking about their personal experiences, Gallagher observed the Respondent "rub[bing] the area inside the inner thigh up towards his genitals with his hand resting on his thigh, the palm of his hand resting on his thigh, and his fingers extended down towards the inside of his inner thigh." His hand "just dropped into his lap...his hand was moving with his fingers on his inner thigh." This type of gesture occurred on three or four occasions during a five month period and ended in March 2004.

Another time when the Respondent was on the telephone Gallagher observed him “take the phone and hold the ear piece aside away from his head and the receiver close to his mouth and stick out his tongue wiggling it back and forth as though he was kissing the phone, tongue kissing the phone with that other member on the other end of the phone.” The Respondent made this gesture approximately ten times during the period between the fall of 2003 and March 2004.

Another gesture recalled by Gallagher that occurred approximately three times during the same period was when the Respondent “held out his hand in front of his face open, as though he was cradling ...somebody’s head...and he would stick his tongue out and move his head towards his hand and start moving it around like he was kissing it, like he was tongue kissing the object.”

In March 2004, after the Respondent continued to stare at his crotch, Gallagher decided that he had had enough of the Respondent’s behavior and drafted his complaint letter to IAB.

Sergeant Hoffer’s Testimony

Hoffer, while he had less contact with the Respondent and looked to minimize the Respondent’s behavior while he was in his office, nevertheless testified and made it clear to this Court that he was troubled by the Respondent’s gestures and staring at his crotch. His credibility does not necessarily stem from the details and uniqueness of his testimony, but from his sheer matter-of-fact observations of the Respondent’s conduct and how that conduct made him feel.

Hoffer went to the Respondent’s office to conference his cases when his immediate supervisor was not in the office. On one of those occasions, in early 2002,

Hoffer noticed something unusual about the Respondent that he described as “nervous habits.” While in the Respondent’s office he saw him moving his hand inside his pocket. He did not know how to characterize the gesture and did not see anything “unusual” about it, but he did notice that his hand was in his pocket for two or three seconds. The second incident occurred within a few months of the first and it again consisted of the Respondent putting his hand in his pocket in Hoffer’s presence. Hoffer explained that he did not “know what he was touching with his hand...but it was in his pocket. Would that be near his groin area I suppose it would be.”

Hoffer also informed the Court that the Respondent stared at him in an unusual way in that “he would seem to glance at the waist area, below the belt line,” referring to his genital area. He explained that “it just seemed like a longer glance than average glance; something that I happen to notice....Either I would be standing or sitting in his office and I just happened to noticed that his eyes would glance, a longer glance than I would expect.” This type of incident occurred “a couple of times” and Hoffer stated that “in retrospect, it would be an uncomfortable feeling, of course, but I didn’t pay any attention to it at the time. It just seemed like an unusual kind of quirky behavior that the Lieutenant had.”

When Hoffer was interviewed by IAB he did not make any allegations against the Respondent because he had no complaints against him. Hoffer’s testimony at trial, however, of the Respondent staring at his crotch, at the very least, supports Gallagher’s testimony of the Respondent doing the same thing.

The Court finds that the combined testimony of Coppola, Gallagher and Hoffer illustrates that during the period from December 2001 through May 2004, the Respondent

on numerous occasions, while in his office with either Coppola, Gallagher or Hoffer present and with the door closed, made a number of sexual gestures that consisted of: staring at crotches for unusually long periods of time; kissing the palms of his hands and sticking his tongue out and moving it in a circular motion; moving his fingers back and forth along his crotch; making a fist with his right hand and raising it approximately 12 inches off his thigh, making up and down strokes from his crotch towards his knee in a masturbation gesture while making sighing sounds; while on the telephone he held both hands out in front of him and stuck his tongue out in a swirling motion as though he was kissing someone; licking the back of his hand; rubbing the area of his inner thigh up towards his genitals while moving his fingers on his inner thigh; and again while talking on the telephone sticking his tongue out and wiggling it back and forth like he was tongue kissing the telephone. He also touched various parts of Coppola's arm and shoulder on many occasions after being told not to.

This Court concludes from this evidence that it was not the imagination or the exaggeration of the complainants that made up the myriad of very descriptive and very unusual sexual gestures, but the Respondent who made these gestures, perhaps spontaneously or planned, as a joke or for some other unknown reason, over a period of approximately two and one half years.

The Respondent's Testimony

Support for the Court's finding that the Respondent made the sexual gestures comes from the Respondent's own testimony. The Respondent, in an attempt to minimize or explain away the charges against him, admits to making several of the gestures that corroborates the kind of behavior that Coppola, Gallagher and Hoffer

testified to. He stated that "I have stuck my tongue out at the phone if I was on the phone for frustration or something like that," but he denied wiggling his tongue and moving his hands in a way that simulated licking a man's testicles. There also may have been other times, according to the Respondent, that he stuck his tongue out, "but generally I would say on the phone." He demonstrated the tongue gesture, in court, by sticking his tongue all the way out and brought it back in. While he stated that he did not have an "independent recollection" of anyone being in his office when he did this gesture he admitted that Coppola "might have been there on one occasion."

He also admitted that, while on the phone, he made stroking motions with his hand and then demonstrated this stroking gesture for the Court by making a whistling gesture and moving his fist at about the level of his shoulder in an outward and up and down motion about three inches away from his body. He attempted to explain away this gesture by stating that it "could mean two things. One, I might be getting jerked around on the phone, or that I was going to stroke someone." He claimed this stroking gesture, which lasted "a couple of seconds more or less" came from the time he attended the Police Academy. He attempted a further explanation of this gesture by stating that "part of the curriculum is actually stroking people. Stroking people is even if you are going to give them negative information, try to make them feel better about it so they don't have a bad day." He gave, as an example, victims of the crime of burglary in a film he viewed in the Police Academy "and the people had been disturbed or their house had been robbed. The idea was rather than going in, purely taking a report and leaving, you would stroke them, just say something nice about the house or something to make the complainants feel better." He also stated that he saw other people use that hand gesture

throughout his career. The Respondent, however, did not “have an independent recollection” of when or where he made those gestures but knew that he “would do it on the phone.” He also may have made those gestures when other people were in his office, but he did not recall if he made those gestures in front of Gallagher or Coppola or any other investigators.

He also admitted to kissing his hand and explained “it is a joke, self deprecating humor because people would call me a brown nose in the Office of Equal Employment Opportunity, and actually throughout my career, I have been called a brown nose and I have been called an ass kisser” and he even volunteered that he received an award in the Chief of Detectives, Investigations Unit “for being the best ass kisser in the world or NYPD.” He did not, however, have an independent recollection of kissing his hand when Coppola or Gallagher was in his office.

The Respondent further admitted that he touched Coppola and again explained that “it is possible I could have touched him on his back, up here to get his attention, but never, never for anything bad....Only to get his attention, because if he was in his cubicle and he would have his head phones on,...I would have knocked or done something to try to get his attention first. Touch would have been a last resort.” He seemed to justify his behavior by adding that Coppola never complained to him about his touching or his “conduct.”

The Respondent stated that he had a dermatologic condition and if he had “an itch [he would] scratch, but never in an inappropriate manner” and he had “no recollection of doing it in front of other people.” He then qualified his answer by admitting that “I am

sure I have scratched myself in the presence of others” but he could not name anyone in particular.

While the Respondent denied demonstrating a masturbatory act, he admitted that it was “possible” that he put his hand near his crotch while working at OEEO “because of medical conditions, but never in the way that these complainants have said....” He further denied touching his genitals for the purpose of satisfying himself sexually while in the presence of other members of the service and further denied making sexual advances towards Coppola or Gallagher or staring at another member’s crotch.

The Respondent, throughout his testimony, admitted to making gestures that this Court finds are not only sexual in nature, they are gestures that are not and should not be common to the workplace. This Court also finds that the sexual gestures admitted to by the Respondent should be non-existent, particularly in the Office of Equal Employment Opportunity, the very place mandated with the responsibility of investigating and eliminating such unacceptable behavior from the workplace. Moreover, the Respondent failed to explain away his behavior, to this Court’s satisfaction, as being inconsistent with the charges. His conduct, even as he attempted to explain it, is not only uncommon, it is unacceptable and it corroborated the allegations made by the complainants in this case.

While the Respondent denies the specific acts alleged against him by Coppola, Gallagher and Hoffer, this Court does not find these denials to be credible. As noted previously, the acts he does admit to support the claims against him. Moreover, the Respondent damaged his own credibility when he acknowledged that he rated Coppola and Gallagher as “Highly Competent” on official Department evaluation forms when he

testified that they were merely "Competent." Clearly one of those statements is untrue and has a direct bearing on this case.

The Respondent argues, however, that Coppola and Gallagher should not be believed because they failed to document or report the incidents concerning the Respondent's sexual gestures. This argument merits some examination.

It is troubling that Coppola and Gallagher, as trained investigators in OEEO, did not document and/or make an official complaint against the Respondent when they were first exposed to his sexual gestures. This Court, however, disagrees that their failing to document or report the Respondent's behavior is fatal to their credibility. A major factor in assessing Coppola's and Gallagher's credibility is the Court's previous finding that the Respondent's own testimony supports and corroborates their testimony against him. His attempt to explain away the sexual gestures that he admitted to making only reinforced and mirrored the sexual gestures that they observed him make.

Moreover, the fact that Coppola and Gallagher are members of a paramilitary organization should not be minimized when the issue of reporting the misconduct of a superior officer arises. While this Court does not condone a situation where one superior officer ignores the misconduct of another superior officer it is mindful that it is an understandable concern of a subordinate.

In first focusing on Coppola, it should be noted that he avoided confronting the Respondent, his superior officer, or approaching those higher in rank with accusations of the Respondent making sexual gestures because he believed, whether based in reality or not, that the Respondent was friends with higher ranking officers in the Department. This notion was reinforced whenever he would observe the Respondent stop what he was

doing “and run over and shake hands with these supervisors.” As a result of his impression of the Respondent’s special relationships with ranking officers, Coppola “didn’t believe there was any place for [him] to complain.”

While Coppola testified that he was confrontational with the Respondent during case review when he thought the Respondent was being unduly critical of his work, accusing the Respondent of making sexual gestures requires confrontation on a different level, a level that Coppola stated that he was afraid to pursue. In addition, his testimony of fearing the shame and embarrassment that he believed he would endure if he exposed what he was experiencing with the Respondent, convinces this Court that his credibility is not tarnished because he failed to document the incidents or to timely report the Respondent.

Coppola sought another means to resolve his dilemma with the Respondent. It is undisputed that he sought a transfer from the Respondent’s team. At first he enlisted the help of Captain Henig to expedite the transfer and when that failed, he sought the help of Inspector Wheeler who ultimately helped him get transferred to the other investigative team and away from the Respondent’s immediate control.

Coppola’s reluctance to report the Respondent sooner also leaves this Court to conclude that he was not out to “get” the Respondent because he did not like his management style and wanted him replaced. His desire to leave the Respondent’s team supports his explanation that he thought he could deal “with it myself. I didn’t work for him anymore. I was fine. I thought I could outlast him. I looked into leaving. No, I didn’t want to complain.” It was only after he was notified to report to IAB that he gave a detailed account of his experience with the Respondent to Department investigators.

Nor does it appear, as the Respondent argues, that Coppola's motive for revealing the Respondent's conduct was for monetary gain because the evidence shows that the financial problem Coppola had with his house had been resolved. His lawsuit pending against the Respondent and the Department was filed after a long period of silence and only after he was made to come forth and give information to IAB.

It was also argued that Coppola lacked credibility because he was involved in prior misconduct. Coppola testified in a forthright manner regarding his prior misconduct. As a rookie police officer, after a confrontation with a senior police officer he was punched in the face by that officer and received medical treatment. Coppola's misconduct was that he misrepresented his injury on his line of duty paperwork where instead of stating he was punched by the officer he wrote that he slipped and fell. He stated he lied because of pressure from a sergeant to do so.

Coppola's misconduct occurred 16 years ago, in 1991. While this Court does not condone Coppola's misconduct, it is clear that he did not receive harsh punishment by the Department thereby indicating how low his level of culpability was viewed at the time. Further, it was not related to this case and it does not appear that Coppola committed any further misconduct during his long career with the Department.

Coppola's prior misconduct also did not diminish the subsequent trust and confidence the Department placed in him by assigning him to commands that conducted sensitive investigations, such as OEEO. His misconduct of 16 years ago, therefore, is not an indicator that he lacks credibility in this present matter.

Gallagher also testified that he felt intimidated by the Respondent, his superior officer, because once again "from outward appearances" the Respondent appeared to be

good friends with high ranking officers because “he was always stopping and talking to two and three star chiefs when they came to the office....He was always on the phone with a chief, inspector, some assistant commissioner so in my mind, I had no way out.” Gallagher believed that if he complained to someone it might be “one of his [the Respondent’s] friends” and thereby jeopardize his career with the Department or his position in OEE0.

Gallagher also did not document or report the incidents of the Respondent’s sexual gestures because he “was trying to ignore it. It bothered me. I was embarrassed. At a certain point I was in denial that something like this could happen to me. I am an EEO investigator, and I hear about what men do to women, but I never thought that it could happen to a man....I never thought that it would happen to me and with another man so I just—I refused to admit it to myself....I didn’t want to admit it so why would I want to write it down.” It was also a matter of denial that prevented him from reporting the Respondent to the Department sooner than he did.

Embarrassment and denial are strong motivators. While it may be argued that Gallagher is a trained investigator and should have been unaffected by these concerns, his conduct is certainly consistent with human nature.

Gallagher, in his own way, made attempts to inform his colleagues of the Respondent’s sexual gestures. He did not directly describe what the Respondent was doing; instead he made indirect comments about some of the experiences he was having. Gallagher testified that he and St. James called a meeting of the Respondent’s team to discuss his management style, but that he did not specifically or clearly raise the issue of the Respondent’s gestures. The Respondent’s own witnesses, however, Detectives

Williams and Grier, indicated that Gallagher alluded to it at the meeting. Williams stated: "I don't remember the exact words, but it was – initially he was kind of sugar coating it like fixing himself or adjusting himself, and then he said he was touching himself in a sexual manner." She explained that because Gallagher "sugar coated" what he was saying to them about the Respondent, she was "paraphrasing" and using her words in court because she did not remember the exact way Gallagher spoke to them.

Grier informed the Court that while at the meeting Gallagher and St. James "alluded to some things but they weren't very clear concerning Lieutenant Crowe...things that he was looking at them inappropriately..." in the crotch area. While Gallagher failed to effectively communicate the extent of the problem, he clearly was trying to reach out on the issue.

The Respondent argues that the failure of Gallagher to speak out loudly and clearly at the meeting should detract from his credibility. This Court finds his circumspect and tentative efforts to raise this sensitive issue, in fact, enhances his credibility.

Gallagher stated that, at one point, he had had enough of the Respondent's gestures and in March 2004, after once again sitting in the Respondent's office and observing what appeared to be the Respondent "holding a man's testicles in his hands...and then moving his tongue around as if he was licking them," Gallagher stood up, told the Respondent "you are fucked up," and left the office. He stated that the Respondent did not punish him; rather, "all he did was kind of smiled at [him]." In May 2004, when the Respondent again stared at his crotch, Gallagher drafted his letter to IAB informing Department investigators of the incidents with the Respondent. It should be

noted that prior to drafting that letter Gallagher went to Henig and asked to be transferred from the Respondent's team. His request was denied.

The Respondent made a number of additional arguments in support of his defense. The first to be addressed is the Respondent's claim that Gallagher has a motive to lie because he had financial difficulties and expects to get a monetary windfall from his federal lawsuit. Testimony during trial showed that Gallagher and his wife filed for bankruptcy in 2001, approximately three years before he reported the Respondent to IAB. While monetary gain can never be ruled out as a motive or reason behind certain actions that people take, in this case no evidence, other than his three year old bankruptcy, was presented to show that Gallagher made his allegations against the Respondent for financial gain.

The Respondent further argues that Gallagher lacks credibility because he was previously disciplined a number of years ago, while at the Department's Legal Bureau, for using a Department parking placard to go through the Queens Midtown Tunnel, in his private vehicle, without permission from the Department. This Court finds that Gallagher's wrongful use of a Department placard did not diminish the subsequent trust and confidence the Department placed in him as evidenced by his assignment to commands that conduct sensitive investigations, such as OEEA. On balance, the Court finds that it does not diminish his credibility in this case.

The Respondent also argues that the allegations brought against him were due to "racism and homophobia." This Court has not heard any evidence to support this allegation, nor is there any indication the Respondent reported any conduct of this nature. In addition, while it was brought to the Court's attention that Coppola and Gallagher did

not like the Respondent's management style, it was also brought to the Court's attention by Curry, Williams and Grier that they also had complaints about how the Respondent managed his team. There is no reason to believe that a disagreement over management style prompted these charges.

It was also pointed out during trial that Coppola and Gallagher commuted to work on the same train. While they claim that they did not discuss this case during their commute, this issue obviously needs to be explored. First, this Court notes that Coppola's and Gallagher's testimony did not appear to come from the same script; that is, each of the incidents was unique in nature and the testimony of one did not reflect the same words or even the same actions as those described by the other. Further, Hoffer, who did not complain about the Respondent's conduct and is not part of the lawsuit, corroborates that the Respondent engaged in offensive conduct. Lastly, as has been noted the Respondent admits to conduct which corroborates the testimony of Coppola and Gallagher. Consequently, this Court finds that there was no collusion in the testimony of Coppola and Gallagher.

The Respondent also argues that Hoffer did not witness any misconduct on the part of the Respondent and therefore his testimony should be disregarded. Hoffer testified that on a number of occasions while he was in the Respondent's office, he noticed something unusual about the Respondent in that "he had some nervous habits..." and he saw him put his hand in his pocket and he saw "the hand move." Hoffer was not sure what he was touching, but he saw the Respondent's hand in his pocket "near his groin area."

He also testified that the Respondent stared at him in an unusual way in that “he would seem to glance at the waist area, below the belt line” at his genital area. He noted that the staring “just seemed like a longer glance than an average glance; something that I happen to notice.” Hoffer described the circumstances of the staring as “either I would be standing or sitting in his office, and I just happened to notice that his eyes would glance, a longer glance than I would expect.” He explained that this type of incident occurred “a couple of times [and] in retrospect, it would be an uncomfortable feeling, of course, but I didn’t pay any attention to it at the time. It just seemed like an unusual kind of quirky behavior that the Lieutenant had.”

This Court finds that the Respondent putting his hand in his groin area and staring at Hoffer’s crotch is similar to the type of gestures and staring that Coppola and Gallagher described during their testimony. What makes Hoffer’s testimony credible is the fact that he is not accusing the Respondent of misconduct. While Hoffer is not alleging misconduct, the Respondent’s staring at his crotch “in retrospect” made him feel uncomfortable. That honest statement by Hoffer convinces this Court that the Respondent’s staring was more than just “quirky behavior,” but part of the Respondent’s continuous course of conduct. It should be noted that Hoffer was not a direct subordinate of the Respondent.

While Hoffer was able to observe the Respondent’s conduct he was not in the same position as Coppola and Gallagher. He was not a direct subordinate of the Respondent and was not as frequently exposed to his behavior.²⁴ Hoffer’s conclusion that the Respondent did not engage in misconduct does not reflect the experiences of

²⁴ It should be remembered that both Coppola and Gallagher tried to remedy their situation by obtaining transfers to another investigating team which would have put them in the same situation as Hoffer.

Coppola and Gallagher and in any event his determination is not controlling on this issue of what constitutes misconduct.

Doctor Landau's Testimony

Doctor Landau, a dermatologist, testified for the Respondent. She stated that she treated the Respondent between 2001 and 2004 for a variety of symptoms including a "[REDACTED]" and a condition called "[REDACTED]". It was also brought out during her testimony that the [REDACTED] appeared to be clearing and responding to medication. This Court is mindful that a dermatological condition can be very uncomfortable and require a certain amount of attention in the form of scratching to resolve the itchy symptoms. This Court is not convinced, however, that a dermatological condition would warrant the Respondent's continuous scratching in front his subordinates, in the confines of his office over a two year period and certainly does not warrant extensive staring at crotches, masturbation gestures, tongue gestures and sighing sounds. Landau's testimony was somewhat informative, but not persuasive in convincing the Court that the Respondent was reacting to a medical condition while a subordinate was sitting in his office with the door closed.

William Kelly's Testimony

Kelly, a polygraph expert, also testified for the Respondent. He stated that he conducted polygraph tests of the Respondent on three occasions: October 5, 6, & 7 of 2004. On each day he asked the same series of questions over the course of three tests and he concluded that the "overall results" of the tests was that the Respondent was telling the truth. The conclusion that this Court draws, however, from Kelly's "overall tests results" is that the Respondent's truthfulness can only be deemed inconclusive.

Prior to conducting the test Kelly connected the Respondent to the polygraph machine's various devices that measure breathing response, heart rate and blood pressure and Galvanic skin response or perspiration of the skin. If a person is lying during the test, one or more of these measures will record a reaction in a chart attached to the machine. Kelly's method of testing was the "relevant/irrelevant test." For example, the first four questions are irrelevant and control questions, the fifth question is relevant, the sixth is irrelevant and the seventh is relevant and continues in that fashion. The purpose of the relevant/irrelevant questions is to allow the body to subside in the event that a person has a reaction to a relevant question.

There were several areas of Kelly's testing procedure that is of concern to this Court. At the outset, the questions were devised by the Respondent, his counsel and Kelly. While Kelly informed the Court that "the three of us were in the room, and we formulated the question based on, you know, information I had relevant to the charges" he nevertheless relied on defense counsel and the Respondent for any information regarding the allegations in this case. Kelly never saw the actual charges and specifications in this case and therefore he had no direct or first hand knowledge of whether the questions he devised were specifically relevant to the charges.

Moreover, several of the "relevant" questions were compound in nature with part of the question relevant to the specific wording of the charges and a second part that injected a specific element of intent. For example, questions pertaining to the charges involving Coppola, Gallagher and Hoffer were drafted and asked in the form of "Did you ever touch Sergeant Coppola *with intent to seduce him?* Did you ever rub your genitals *for self gratification* in the presence of Sergeant Coppola/Gallagher/Hoffer? Have you

ever made gestures *in order to seduce* Sergeant Coppola/Gallagher? Have you ever stared at Sergeant Hoffer's crotch *in order to seduce him?*" (Emphasis added)

The wording of these questions leaves this Court to speculate as to which part of the multi-faceted questions the Respondent was reacting to. Was his truthful reaction relating to him not rubbing his genitals or was it that he did not rub them with the intent to seduce? This concern applies to all of the similarly worded questions on Kelly's test and thereby creates serious doubt as to whether this Court can accept the conclusion that the Respondent was being truthful to questions that were specifically relevant to this case.

Also of major concern is Kelly's testimony that the Respondent had "reactions" to some of the relevant test questions regarding Coppola, Gallagher and Hoffer. With regard to questions concerning Coppola, Kelly stated that the Respondent "had some reaction on question No. 5, 'Did you ever touch Sergeant Coppola with intent to seduce him?' He had a little reaction on test No. 1, in the last question, 'Did Sergeant Coppola ever complain to you that you created a hostile work environment?'; he had a little reaction to that on test No. 2. All the other questions on the other tests, there were no significant reactions on the charts." When Kelly was asked to explain the significance of the Respondent's reaction to one of the questions, his explanation of: "that can happen; God only knows why that happens. The body is a very intricate machine. It doesn't always do what it is suppose to do. If a person is truthful on two out of three tests, to me he is truthful" is not acceptable as conclusive evidence to this Court. These reactions, as described by Kelly, may very well have been an indication that the Respondent was lying on approximately thirty percent of the test.

Regarding questions asked of the Respondent concerning Gallagher, Kelly stated “the charts indicated to me that he was telling the truth on all questions on all charts except for chart No. 2, question No. 5, ‘Did you ever rub your genitals for self gratification in the presence of Sergeant Gallagher?’” Kelly explained that there was a reaction to that question which meant that “he could be not telling the truth or he could be upset about the question. It could be about anything. The other two tests have no reaction to that question. My conclusion is that he was telling the truth; was not being deceptive.”

Regarding questions asked of the Respondent concerning Hoffer, Kelly stated “there was no reaction during test one of the relevant questions and there was no reaction to test three.” He stated that there were reactions on test two “to the three relevant questions.” When he was asked what was the scientific significance to those reactions in terms of his conclusions he stated “those things happened. I don’t know why they happen, to be honest with you, but since he passed the first and the third tests without any reactions whatsoever, my conclusion is that he is telling the truth.” Once again, this Court has serious concerns as to the Respondent’s veracity of the several “relevant” questions that comprised a significant part of the test.

In this Court’s opinion, the fact that Kelly cannot give a scientific if not plausible reason why the Respondent had reactions to several of the relevant questions, leaves to speculation the possibility, or even likelihood that he was not telling the truth and therefore renders the tests results as inconclusive as the “God only knows” explanation that Kelly gave for the Respondent’s reactions. Moreover, for this Court to accept the results of a polygraph test as conclusive the formulation of the test questions must be

consistent with the actual charges and the reactions to those relevant test questions should be consistent with telling the truth throughout the entire testing procedure.

Based on the foregoing, this Court concludes that the Respondent engaged in the conduct of staring at the complainants' crotches and making various and numerous sexual gestures. This conduct is found to this Court's satisfaction by a preponderance of the evidence to be conduct prejudicial to the good order, efficiency and discipline of the Department because they were "clearly wrong and contrary to the training and practices of a reasonable officer." (Patrol Guide section 203-10)

Accordingly, the Respondent is found Guilty of Specification Nos. 1, 2, and 3, as charged.

Specification No. 4

The Respondent, under this specification, is further charged with between December 1, 2001 and June 4, 2004, while on duty, he engaged in a continuing course of sexual harassment by creating an intimidating, hostile, or offensive work environment and by unreasonably interfering with the work performance of his subordinates, Coppola and Gallagher.

The basic requirements for sexual harassment can be found in Meritor Savings Bank v. Vinson, 477 U.S. 57 (1986), where that Court citing the Federal Equal Employment Opportunity Commission's Guidelines on Discrimination stated that "In defining 'sexual harassment' the Guidelines first describe the kinds of workplace conduct that may be actionable under Title VII. These include '[u]nwelcome sexual advances, requests for sexual favors, *and any other verbal or physical conduct of a sexual nature.*'"

(Emphasis added) citing 29 CFR 1604.11(a)). The Meritor Court further stated that “the Guidelines provide that such sexual misconduct constitutes prohibited ‘sexual harassment’ whether or not it is directly linked to the grant or denial of an economic quid pro quo, where *‘such conduct has the purpose or effect of unreasonably interfering with an individual’s work performance or creating an intimidating or offensive working environment.’*” (Emphasis added) (1604.11) “For sexual harassment to be actionable, it must be sufficiently severe or pervasive ‘to alter the conditions of [the victim’s] employment and create an abusive working environment.’” In Harris v. Forklift Systems, 510 U.S. 17 1993, the Court stated that “whether an environment is ‘hostile’ or ‘abusive’ can be determined only by looking at all the circumstances. These may include the frequency of the discriminatory conduct; its severity; whether it is physically threatening or humiliating, or a mere offensive utterance; and whether it unreasonably interferes with an employee’s work performance.”

The Department’s Equal Employment Opportunity Policy Handbook mirrors the Federal Guidelines’ regarding sexual harassment and comprehensively adds that “There is a broad range of conduct by supervisors and coworkers which can, in certain circumstances, be considered sexual harassment and this includes, but is not limited to, sexually suggestive remarks, sexually suggestive pictures, *sexually suggestive gesturing*, verbal harassment or abuse of a sexual nature, subtle or direct propositions for sexual favors, and *unnecessary touching, patting, or pinching*. (Emphasis added) These activities are prohibited both in the actual workplace and in any location that can be reasonably regarded as an extension of the workplace, such as an off-site Department sanctioned social.”

The question raised by this specification, relevant to the findings and guidance provided under the Meritor and Harris courts and the Department's Equal Employment Opportunity Policy is whether Coppola and Gallagher while at their place of employment, were sexually harassed by the Respondent as a result of frequent and unwanted sexually suggestive gesturing and unnecessary touching.

This Court found the Respondent Guilty, under Specification Nos. 1 and 2, in part, of making improper sexually suggestive gestures in the presence of Coppola and Gallagher, improperly staring at Gallagher's groin area and improperly touching Coppola without his permission, on numerous occasions over a two year period at their place of employment in the OEEO command. The Respondent's behavior under this finding of guilt falls within the Department's "broad range of conduct by supervisors and coworkers which can, in certain circumstances, be considered sexual harassment. The next step for the Court is to determine the effect, if any, the Respondent's misconduct had on Coppola's and Gallagher's working environment.

Coppola and Gallagher expressed fear of reporting the Respondent's sexual gestures because of his rank and position in the Department and in OEEO. He is a lieutenant and was their supervisor. This fear of the Respondent, however, did not prevent them from challenging him when it was relevant to their work. But when it came to challenging the Respondent with regard to his unwanted behavior they were reluctant to cross that line because of their fear of his retaliation and their embarrassment.

Coppola's "fear [of] who was going to investigate it, who would look at it. He [Respondent] knew all these high-ranking people, and [Coppola] just tried to deal with it." He believed that the Respondent would "ruin" his career through "advancement or

assignment.” Gallagher also felt intimidated by the Respondent because he made it clear to Gallagher, “from outward appearances,” that he knew important people in the Department which became evident when he saw the Respondent “talking to two and three star chiefs when they came to the office.” Gallagher’s fear of the Respondent caused him to believe that “if I didn’t just sit there and take it that in some way I was going to be damaged in my career or in my position at OEE0.

While they attempted in ways short of challenging the Respondent to remove themselves from his control—Coppola applied twice and was ultimately successful in getting transferred to another team and Gallagher also looked to distance himself from the Respondent and further attempted to enlist the help of his fellow investigators with his cryptic description of the Respondent’s gestures before he decided to file a formal complaint to IAB—they nevertheless were subjected to the Respondent’s behavior for more than two years.

During that two year period Coppola and Gallagher testified that they developed symptoms, both physical and mental, that interfered with their professional and private lives. Coppola testified that after sitting through episodes of the Respondent’s sexual gestures he felt the experience “was demeaning” and upsetting to him and he would have bouts of diarrhea and throwing up in the bathroom. He stated that he became physically ill starting in the winter of 2002 through the summer of 2003 and explained that “there were times, being thrown out of his office after some kind of gesture going on, I was just upset, I was humiliated.” Coppola also believed that the Respondent’s holding up of his overtime slips attributed to his financial problems and caused his wife to believe that he was having an affair.

Gallagher testified that he did not report the Respondent sooner than he did because he was in denial that it was happening to him. "For me, I am an investigator. Here I am doing this work, and this is happening to me. I just didn't want to deal with it. And then where it is the same sex, it is more embarrassing....All I know is that type of stuff was happening to me. I shut it out, I closed it out. I withdrew from my wife, I withdrew from my family. Withdrawing in a sense I wouldn't talk to them about anything of substance for fear that this would come out; that I would have to deal with it." Gallagher stated that his work also "started to suffer" as a result of his experience with the Respondent. He testified that he did not want to report to work to discuss his cases with the Respondent because he wanted to minimize the amount of contact he had with him to avoid exposure to his sexual gestures. Consequently, he began taking more time off in the form of emergency or "E" days to avoid coming into work to minimize his contact with the Respondent. He also claimed that his "objectivity" was affected in cases involving sexual discrimination.

This Court finds that Coppola and Gallagher did not fully establish to this Court's satisfaction the full measure of their assertions of the physical and emotional effects that they claim to have suffered as a result of the Respondent's behavior because their testimony was not supported by any corroborating evidence at trial. For example, no trained professionals from the medical or psychological fields testified in support of their assertions; nor were their medical reports offered as evidence to support the physical conditions they claimed existed. In addition, family members for either Coppola or Gallagher did not appear to speak to the troubles they were allegedly having. This is not

to say that these conditions did not exist. It is to say that this Court needs more by way of corroboration, to be satisfied that these conditions, in fact, did exist.

This Court further finds, however, that it does not need to find that the conditions complained of by Coppola and Gallagher existed for a finding that the Respondent sexually harassed them. The Respondent's previously described sexually suggestive gesturing, unwanted touching and staring over a two year period, along with the superior position he maintained with the Department, in and of itself created an intimidating, abusive and offensive working environment. That type of behavior, by any reasonable standard of proper comportment in the work place, can only be viewed as demeaning and humiliating and leaves the Court with little doubt that it can seriously detract and interfere with an employee's work performance. Consequently, this Court agrees with Gallagher where he concluded the Respondent's "behavior to be sexually harassing" because he "found nothing common about the different things that he was doing to [him], nothing that would be viewed as normal behavior, either by a person who was having some type of medical condition or not."

Accordingly, I find the Respondent Guilty as charged under Specification No. 4.

PENALTY

In order to determine an appropriate penalty, the Respondent's service record was examined. See Matter of Pell v. Board of Education, 34 N.Y.2d 222 (1974).

The Respondent was appointed to the Department on January 2, 1985. Information from his personnel file that was considered in making this penalty recommendation is contained in an attached confidential memorandum.

The Respondent has been found Guilty of conduct prejudicial to the Department in that he made numerous sexual gestures in the presence of three subordinate members of the service over a two and a half year period. The Respondent was also found Guilty of sexual harassment in that he created a hostile and abusive work environment for two of those subordinate members of the service.

The Department recommended that the Respondent receive a penalty of termination from the Department for this finding of Guilt. While this Court finds that making sexual gestures and sexual harassment are very serious offenses and cannot be tolerated by any member of the Department, the recommendation of termination may prove to be too drastic a penalty.

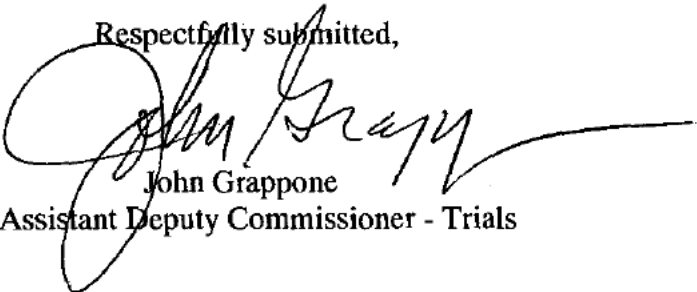
In Disciplinary Case No. 79831/04, the Respondent, a Sergeant, was found Guilty of sexually harassing behavior against a subordinate female police officer assigned to his squad thereby creating a hostile work environment for her. The Court in that case found that over a two year period he repeatedly made inappropriate comments, made repeated requests for sexual favors and unwanted sexually suggestive touching of that member of the Department. The penalty the Respondent received for his misconduct was a forfeiture of 60 suspension days and dismissal from the Department under the terms pursuant to his placement on one year dismissal probation.

Under the present case, the findings of Respondent's guilt of sexual harassment and related charges should not be viewed as more serious, for penalty purposes, than the findings in Disciplinary Case No. 79831/04. In addition, placing a member on dismissal probation is reserved for the more serious offenses where a period of monitoring is

required and where the member can be terminated for any future misconduct committed during the one year probationary period.

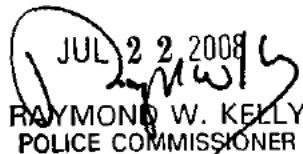
Based on the foregoing and the Respondent's service record, I recommend that the Respondent be DISMISSED from the New York City Police Department, but that his dismissal be held in abeyance for a period of one year, pursuant to Section 14-115 (d) of the Administrative Code, during which time he remains on the force at the Police Commissioner's discretion and may be terminated at anytime without further proceedings. I further recommend that the Respondent be suspended for a period of 60 days.

Respectfully submitted,



John Grappone
Assistant Deputy Commissioner - Trials

APPROVED



JUL 22 2008
RAYMOND W. KELLY
POLICE COMMISSIONER